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REPORTS: Yes

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Report on the collection & use of DNA samples under P.L.1994, c. 136, N.J.S.A. 53:1-20.17 et. seq. / Attorney General Police Office Forensic Sciences.

<http://hdl.handle.net/10929/32374>

HEARINGS: No

OTHER: Yes

Combined DNA Index System ("CODIS") <https://www.fbi.gov/services/laboratory/biometric-analysis/codis>

Chapter Laws Referenced in Sponsors' Statement - L. 2001, c. 377 (<http://hdl.handle.net/10929.1/20522>) and L. 1993, c. 136 (<http://hdl.handle.net/10929.1/9035>)

NEWSPAPER ARTICLES: No

LAW/CL

§§2,3 -
C.2A:84A-32c &
2A:84A-32d
§4 - Note

P.L.2014, CHAPTER 127, *approved November 9, 2015*
Assembly Substitute for
Assembly, No. 1678

1 AN ACT concerning DNA evidence, amending P.L.2001, c.377, and
2 supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2001, c.377 (C.2A:84A-32a) is amended to
8 read as follows:

9 1. a. Any eligible person **【**who was convicted of a crime and is
10 currently serving a term of imprisonment**】** may make a motion
11 before the trial court that entered the judgment of conviction for the
12 performance of forensic DNA testing.

13 (1) The motion shall be verified by the **【**convicted**】** eligible
14 person under penalty of perjury and shall do all of the following:

15 (a) explain why the identity of the defendant was a significant
16 issue in the case;

17 (b) explain in light of all the evidence, how if the results of the
18 requested DNA testing are favorable to the defendant, a motion for
19 a new trial based upon newly discovered evidence would be
20 granted;

21 (c) explain whether DNA testing was done at any prior time,
22 whether the defendant objected to providing a biological sample for
23 DNA testing, and whether the defendant objected to the
24 admissibility of DNA testing evidence at trial. If evidence was
25 subjected to DNA or other forensic testing previously by either the
26 prosecution or the defense, the court shall order the prosecution or
27 defense to provide all parties and the court with access to the
28 laboratory reports, underlying data and laboratory notes prepared in
29 connection with the DNA testing;

30 (d) make every reasonable attempt to identify both the evidence
31 that should be tested and the specific type of DNA testing sought;
32 and

33 (e) include consent to provide a biological sample for DNA
34 testing.

35 (2) Notice of the motion shall be served on the Attorney
36 General, the prosecutor in the county of conviction, and if known,
37 the governmental agency or laboratory holding the evidence sought

EXPLANATION – Matter enclosed in bold-faced brackets **【thus**】** in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 to be tested. Responses, if any, shall be filed within 60 days of the
2 date on which the Attorney General and the prosecutor are served
3 with the motion, unless a continuance is granted. The Attorney
4 General or prosecutor may support the motion for DNA testing or
5 oppose it with a statement of reasons and may recommend to the
6 court that if any DNA testing is ordered, a particular type of testing
7 be conducted.

8 b. The court, in its discretion, may order a hearing on the
9 motion. The motion shall be heard by the judge who conducted the
10 trial unless the presiding judge determines that judge is unavailable.
11 Upon request of either party, the court may order, in the interest of
12 justice, that the **【convicted】 eligible person who is serving a term of**
13 **imprisonment at the time of the hearing** be present at the hearing of
14 the motion.

15 c. The court shall appoint counsel for the **【convicted】 eligible**
16 person who brings a motion pursuant to this section if that person is
17 indigent.

18 d. The court shall not grant the motion for DNA testing unless,
19 after conducting a hearing, it determines that all of the following
20 have been established:

21 (1) the evidence to be tested is available and in a condition that
22 would permit the DNA testing that is requested in the motion;

23 (2) the evidence to be tested has been subject to a chain of
24 custody sufficient to establish it has not been substituted, tampered
25 with, replaced or altered in any material aspect;

26 (3) the identity of the defendant was a significant issue in the
27 case;

28 (4) the **【convicted】 eligible** person has made a prima facie
29 showing that the evidence sought to be tested is material to the issue
30 of the **【convicted】 eligible** person's identity as the offender;

31 (5) the requested DNA testing result would raise a reasonable
32 probability that if the results were favorable to the defendant, a
33 motion for a new trial based upon newly discovered evidence would
34 be granted. The court in its discretion may consider any evidence
35 whether or not it was introduced at trial;

36 (6) the evidence sought to be tested meets either of the
37 following conditions:

38 (a) it was not tested previously;

39 (b) it was tested previously, but the requested DNA test would
40 provide results that are reasonably more discriminating and
41 probative of the identity of the offender or have a reasonable
42 probability of contradicting prior test results;

43 (7) the testing requested employs a method generally accepted
44 within the relevant scientific community; and

45 (8) the motion is not made solely for the purpose of delay.

1 e. If the court grants the motion for DNA testing, the court
2 order shall identify the specific evidence to be tested and the DNA
3 technology to be used.

4 (1) If the parties agree upon a mutually acceptable laboratory
5 that is accredited by **【the American Society of Crime Laboratory**
6 **Directors Laboratory Accreditation Board or a laboratory that has a**
7 **certificate of compliance with national standards issued pursuant**
8 **to】** a nonprofit professional association of persons actively involved
9 in forensic science that is nationally recognized within the forensic
10 science community and approved by the Director of the Federal
11 Bureau of Investigation in accordance with the provisions of the
12 Federal DNA Identification Act, 42 U.S.C.A. s.14131 **【from the**
13 **National Forensic Science Technology Center】**, the testing shall be
14 conducted by that laboratory.

15 (2) If the parties fail to agree, the testing shall be conducted by
16 the New Jersey State Police Office of Forensic **【Science】** Sciences
17 Laboratory. For good cause shown, however, the court may,
18 subject to the provisions of section of P.L. , c. (C.)
19 (pending before the Legislature as this bill), direct the evidence to
20 an alternative laboratory that is accredited by **【the American**
21 **Society of Crime Laboratory Directors Laboratory Accreditation**
22 **Board or a laboratory that has a certificate of compliance with**
23 **national standards issued pursuant to】** a nonprofit professional
24 association of persons actively involved in forensic science that is
25 nationally recognized within the forensic science community and
26 approved by the Director of the Federal Bureau of Investigation in
27 accordance with the provisions of the Federal DNA Identification
28 Act, 42 U.S.C.A. s.14131 **【from the National Forensic Science**
29 **Technology Center】**.

30 f. The result of any testing ordered pursuant to this section
31 shall be fully disclosed to the person filing the motion, the
32 prosecutor and the Attorney General. If requested by any party, the
33 court shall order production of the underlying laboratory data and
34 notes.

35 g. The costs of the DNA testing ordered pursuant to this
36 section shall be borne by the **【convicted】** eligible person.

37 h. An order granting or denying a motion for DNA testing
38 pursuant to this section may be appealed, pursuant to the Rules of
39 Court.

40 i. DNA testing ordered by the court pursuant to this section
41 shall be done as soon as practicable.

42 j. DNA profile information from biological samples taken
43 from **【a convicted】** an eligible person pursuant to a motion for post-
44 conviction DNA testing in accordance with the provisions of this
45 section shall be treated as confidential and shall not be deemed a
46 public record under P.L.1963, c.73 (C.47:1A-1 et seq.) or the

1 common law concerning access to public records; except as
2 provided in section 2 of P.L.2001, c.377 (C.53:1-20.37).

3 k. As used in this act **【the terms】** and in P.L. , c. (C.)
4 (pending before the Legislature as this bill):

5 "DNA," "DNA sample," "State DNA databank," "CODIS" and
6 "FBI" shall have the meaning set forth in section 3 of P.L.1994,
7 c.136 (C.53:1-20.19).

8 "NDIS-participating laboratory" is a laboratory that has been
9 designated to operate CODIS and participate in the National and
10 State DNA Index System.

11 l. If evidence tested at a non-NDIS-participating laboratory
12 pursuant to this section reveals a DNA profile that is not that of the
13 eligible person or the victim, the court shall direct the prosecuting
14 agency appearing on the motion to request that the New Jersey State
15 Police Office of Forensic Services DNA Laboratory or other NDIS-
16 participating laboratory involved in the matter submit the profile to
17 CODIS, if the requirements and prerequisites for acceptance and
18 submission are met, to determine whether it matches a DNA profile
19 of a known individual or a DNA profile from an unsolved crime.

20 m. An eligible person may file a motion for the performance of
21 forensic DNA testing with the trial court that entered the judgment
22 of conviction. The motion may be considered in accordance with
23 the provisions of this section only if the court finds just cause to
24 hear the motion.

25 For a person who was convicted of a crime and is serving a
26 sentence imposed for that criminal conviction, a determination of just
27 cause shall be based on a reasonable probability that, if the results of
28 the requested DNA testing were favorable, a motion for a new trial
29 based on newly discovered evidence would be granted.

30 For a person who has been convicted of a crime and has completed
31 serving the sentence for that conviction, a determination of just cause
32 shall be based on a significant likelihood that, if the results of the
33 requested DNA testing were favorable, a motion for a new trial based
34 on newly discovered evidence would be granted.

35 n. For the purposes of this section, "eligible person" means a
36 person who was convicted of a crime:

37 (1) and is currently serving a sentence imposed for that criminal
38 conviction which includes a period of imprisonment; or

39 (2) who has completed serving the sentence for that conviction
40 and demonstrates just cause as established in subsection m. of this
41 section.

42 (cf: P.L.2001, c.377, s.1)

43

44 2. (New section) a. If a party seeks to conduct DNA testing at
45 an accredited non-NDIS participating laboratory that otherwise

1 meets the requirements set forth in paragraphs (1) and (2) of
2 subsection e. of section 1 of P.L.2001, c.377 (C.2A:84A-32a) and
3 the party seeks to submit the DNA profile information to CODIS in
4 accordance with subsection l. of section 1 of P.L. 2001, c.377
5 (C.2A:84A-32a) the party, upon notice to the Attorney General and
6 to the NDIS-participating laboratory, may request the court to order
7 the NDIS-participating laboratory within the State to evaluate
8 whether the laboratory at which the party seeks to conduct DNA
9 testing is in compliance with the FBI Quality Assurance Standards
10 for Forensic DNA Testing Laboratories for the purpose of
11 uploading crime scene profiles to CODIS. The Attorney General
12 may appear on the motion on his own behalf or on behalf of the
13 NDIS-participating laboratory, if that laboratory is a public entity.

14 b. The court may order the NDIS-participating laboratory to
15 conduct an evaluation pursuant to subsection b. of this section only
16 if the court finds that the moving party clearly demonstrates:

17 (1) the New Jersey State Police Office of Forensic Sciences
18 DNA Laboratory is not able to, or for practical reasons has
19 determined not to, perform the specific testing and analysis sought
20 by the moving party, or that its performance of the testing and
21 analysis would not be substantially equivalent to that of the other
22 laboratory, or that the testing would not otherwise be appropriate;

23 (2) there is a significant likelihood that, if the results of the
24 requested DNA testing were favorable to the moving party, a
25 motion for a new trial based upon newly discovered evidence would
26 be granted;

27 (3) requiring the NDIS-participating laboratory to conduct the
28 evaluation will not delay investigations or unduly burden the
29 resources of the New Jersey State Police Office of Forensic
30 Sciences DNA Laboratory or other NDIS-participating laboratory
31 that may be involved in the matter; and

32 (4) if an evaluation were undertaken, there would be a reasonable
33 likelihood that the results of the evaluation would conclude in a
34 finding by the NDIS-participating laboratory that the laboratory at
35 which the party seeks to conduct DNA testing is in compliance with
36 the FBI Quality Assurance Standards for Forensic DNA Testing
37 Laboratories for the purpose of uploading crime scene profiles to
38 CODIS, and that the results of that laboratory's DNA testing, if a
39 DNA profile is generated, would comply with federal requirements
40 for inclusion in CODIS.

41 c. If the court orders an evaluation pursuant to subsection b. of
42 this section, within 120 days of receiving the court's order, the
43 NDIS-participating laboratory shall complete the pre-approval

1 process to determine if the non-NDIS-participating laboratory at
2 which the party is seeks to conduct DNA testing is in compliance
3 with FBI Quality Assurance Standards for Forensic DNA Testing
4 Laboratories, by obtaining and reviewing the records of an on-site
5 visit and assessment conducted by the FBI or another NDIS-
6 participating laboratory. If an on-site visit and assessment have not
7 been conducted within the time frames required by federal law or
8 the laboratory does not comply with other applicable standards, or
9 the results of an on-site visit and assessment are unavailable, the
10 NDIS-participating laboratory may, within the limits of available
11 resources, conduct its own on-site visit and assessment of the
12 laboratory at which the party seeks to conduct DNA testing,
13 provided that the laboratory agrees to cooperate with the on-site
14 visit and assessment and the moving party bears the costs associated
15 with the on-site visit and assessment.

16 d. In the event that the requirements set forth in the FBI Quality
17 Assurance Standards for Forensic DNA Testing Laboratories
18 following the effective date of P.L. , c. (C.) (pending
19 before the Legislature as this bill) are amended or otherwise
20 superseded, the NDIS-participating laboratory shall complete such
21 other process as may be prescribed for the assessment of non-NDIS-
22 participating laboratories.

23 e. A determination by the NDIS-participating laboratory as to
24 whether the laboratory at which the party seeks to conduct DNA
25 testing is in compliance with FBI Quality Assurance Standards for
26 Forensic DNA Testing Laboratories shall not be subject to judicial
27 review.

28

29 3. (New section) Nothing in P.L. , c. (C.) (pending
30 before the Legislature as this bill) shall be construed to:

31 a. create a right, obligation, or requirement regarding the
32 preservation of evidence, including evidence that may contain a
33 biological sample;

34 b. provide a basis for a remedy or cause of action based on a
35 failure to preserve or retain evidence, including evidence that may
36 contain a biological sample; or

37 c. affect or modify the Guidelines for the Retention of Evidence
38 promulgated by the Attorney General and any successor guidelines
39 or directives promulgated or issued by the Attorney General.

40

41 4. This act shall take effect on the first day of the fourth month
42 next following the date of enactment.

STATEMENT

1

2 The Assembly Substitute for Assembly Bill No. 1678: (1)
3 provides for certain forensic DNA evidence obtained from a crime
4 scene to be submitted to the Combined DNA Index System
5 (CODIS) for testing, (2) authorizes the court to order the evaluation
6 of certain laboratories for compliance with certain Federal Bureau
7 of Investigation (FBI) standards, and (3) allows certain eligible
8 persons who were convicted of a crime to request forensic DNA
9 testing.

10 *MOTION BY PERSON CONVICTED OF A CRIME:* Currently, under
11 section 1 of P.L.2001, c.377 (C.2A:84A-32a), any person who has
12 been convicted of a crime and is serving a term of imprisonment
13 may make a motion before the court for forensic DNA testing.
14 Under the substitute, a person who has completed a term of
15 incarceration and demonstrates just cause also may make a motion
16 for forensic DNA testing. A court may find that just cause exists
17 when there is a “significant likelihood” that, if the results of the
18 DNA testing were favorable to the person, a motion for a new trial
19 based upon newly discovered evidence would be granted.

20 The substitute sets a lower standard for a person serving a term
21 of imprisonment at the time the motion is made with the court for
22 forensic DNA testing. Under the substitute, a court may find that
23 just cause exists when there is a “reasonable probability” that, if the
24 results of the DNA testing were favorable to the person, a motion
25 for a new trial based upon newly discovered evidence would be
26 granted.

27 *FORENSIC DNA TESTING AND CODIS:* The Combined DNA Index
28 System (CODIS) is a software program that operates national, state,
29 and local level databases of DNA profiles from convicted offenders,
30 missing persons, and unsolved crime scene evidence. Data stored at
31 the national level is kept in the National DNA Index System
32 (NDIS). An NDIS-laboratory is one that has been designated to
33 operate the State DNA Index System and participate in the National
34 DNA Index System and CODIS.

35 Under federal law, forensic DNA analysis may be conducted by
36 either an “NDIS” laboratory or an accredited non-NDIS laboratory.
37 However, the accredited non-NDIS laboratory is required to comply
38 with certain additional conditions if the samples are to be uploaded
39 to CODIS for a search for potential DNA matches.

40 Under this substitute, if evidence tested at a non-NDIS
41 laboratory reveals a DNA profile that is not the convicted person or
42 a victim, a court is authorized to direct the prosecuting authority to
43 request the State Police forensic DNA laboratory or other NDIS-
44 participating laboratory to submit DNA evidence to CODIS in order
45 to determine whether the evidence matches a DNA profile from an
46 unsolved crime or of a known individual.

1 *EVALUATION OF NON-NDIS LABORATORIES* Because non-
2 NDIS laboratories do not have direct access to the CODIS database,
3 any DNA profiles they produce can be uploaded to the system only
4 with the assistance of an NDIS laboratory. Additionally, before
5 testing any samples in a particular case, the non-NDIS laboratory is
6 required to be evaluated by an NDIS laboratory and receive pre-
7 approval for samples to be eligible for uploading to CODIS for a
8 search for potential matches. Currently, if DNA samples are tested
9 by an accredited laboratory which has not been pre-approved by an
10 NDIS laboratory, the results of the testing may be used in court, but
11 may not be uploaded to CODIS for a search for potential matches.

12 Under this substitute, if a party seeks to conduct DNA analysis at
13 a non-NDIS laboratory that otherwise meets the accreditation
14 requirements set forth in section 1 of P.L.2001, c.377 (C.2A:84A-
15 32a), and the party seeks to order a CODIS search, that party may
16 request the court to order the NDIS laboratory to evaluate the non-
17 NDIS laboratory. Prior to requesting the CODIS search, the party is
18 required to notify the Attorney General and the NDIS laboratory
19 that would be conducting the evaluation. The substitute permits the
20 Attorney General to appear on the motion on his own behalf or the
21 behalf of the NDIS laboratory, if the laboratory is a public entity.

22 If the court grants the motion, within 120 days of receiving the
23 court order, the NDIS laboratory will be required to complete the
24 pre-approval process to determine if the non-NDIS laboratory is in
25 compliance with the FBI standards by obtaining and reviewing the
26 records of an on-site visit conducted by the FBI or another NDIS
27 laboratory. If an on-site visit and assessment have not been
28 conducted within the federally required time frames or the non-
29 NDIS laboratory does not comply with other applicable standards,
30 or the results of an on-site visit and assessment are unavailable, the
31 NDIS-participating laboratory may conduct its own on-site visit.

32 Under the substitute, a determination by the NDIS laboratory as
33 to whether the laboratory at which the party seeks to conduct DNA
34 testing is in compliance with the FBI standards would not be subject
35 to judicial review. The substitute further provides that if the FBI
36 requirements are amended or superseded, the NDIS laboratory will
37 be required to complete any other process as may be prescribed for
38 the assessment.

39 *INTERPRETATION AND IMPLEMENTATION:* The substitute provides
40 that its provisions are not to be construed to create a right,
41 obligation, or requirement regarding the preservation of evidence,
42 or to provide a basis for a remedy or cause of action based on a
43 failure to preserve or retain evidence. The substitute further
44 provides that its provisions are not to be construed to affect or
45 modify the Guidelines for the Retention of Evidence, and any
46 successor guidelines, promulgated by the Attorney General.

1
2 Authorizes court to order submission of DNA evidence to
3 national database to determine whether evidence matches known
4 individual or DNA profile from an unsolved crime.

ASSEMBLY, No. 1678

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblyman CHARLES MAINOR

District 31 (Hudson)

Assemblyman DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

Co-Sponsored by:

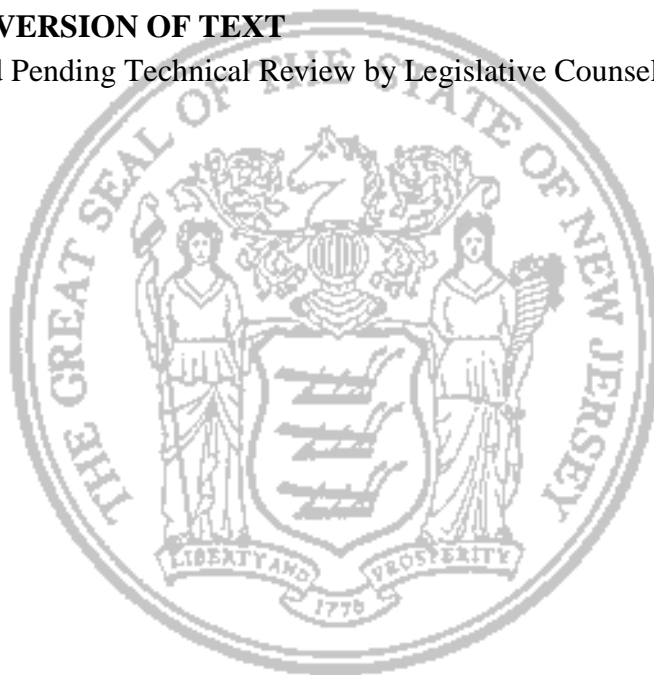
Assemblywoman Simon

SYNOPSIS

Authorizes court to order law enforcement to submit DNA evidence to national database to determine whether the evidence matches a known individual or a DNA profile from an unsolved crime.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 9/19/2014)

A1678 JOHNSON, MAINOR

2

1 AN ACT concerning DNA evidence, amending P.L.2001, c.377 and
2 P.L.1994, c.136 and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2001, c.377 (C.2A:84A-32a) is amended to
9 read as follows:

10 1. a. Any person who was convicted of a crime **[and is**
11 **currently serving a term of imprisonment]** may make a motion
12 before the trial court that entered the judgment of conviction for the
13 performance of forensic DNA testing.

14 (1) The motion shall be verified by the convicted person under
15 penalty of perjury and shall do all of the following:

16 (a) explain why the identity of the defendant was a significant
17 issue in the case;

18 (b) explain in light of all the evidence, how if the results of the
19 requested DNA testing are favorable to the defendant, a motion for
20 a new trial based upon newly discovered evidence would be
21 granted;

22 (c) explain whether DNA testing was done at any prior time,
23 whether the defendant objected to providing a biological sample for
24 DNA testing, and whether the defendant objected to the
25 admissibility of DNA testing evidence at trial. If evidence was
26 subjected to DNA or other forensic testing previously by either the
27 prosecution or the defense, the court shall order the prosecution or
28 defense to provide all parties and the court with access to the
29 laboratory reports, underlying data and laboratory notes prepared in
30 connection with the DNA testing;

31 (d) make every reasonable attempt to identify both the evidence
32 that should be tested and the specific type of DNA testing sought;
33 and

34 (e) include consent to provide a biological sample for DNA
35 testing.

36 (2) Notice of the motion shall be served on the Attorney
37 General, the prosecutor in the county of conviction, and if known,
38 the governmental agency or laboratory holding the evidence sought
39 to be tested. Responses, if any, shall be filed within 60 days of the
40 date on which the Attorney General and the prosecutor are served
41 with the motion, unless a continuance is granted. The Attorney
42 General or prosecutor may support the motion for DNA testing or
43 oppose it with a statement of reasons and may recommend to the
44 court that if any DNA testing is ordered, a particular type of testing
45 be conducted.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 b. The court, in its discretion, may order a hearing on the
2 motion. The motion shall be heard by the judge who conducted the
3 trial unless the presiding judge determines that judge is unavailable.
4 Upon request of either party, the court may order, in the interest of
5 justice, that the convicted person be present at the hearing of the
6 motion.

7 c. The court shall appoint counsel for the convicted person who
8 brings a motion pursuant to this section if that person is indigent.

9 d. The court shall not grant the motion for DNA testing unless,
10 after conducting a hearing, it determines that all of the following
11 have been established:

12 (1) the evidence to be tested is available and in a condition that
13 would permit the DNA testing that is requested in the motion;

14 (2) the evidence to be tested has been subject to a chain of
15 custody sufficient to establish it has not been substituted, tampered
16 with, replaced or altered in any material aspect;

17 (3) the identity of the defendant was a significant issue in the
18 case;

19 (4) the convicted person has made a prima facie showing that
20 the evidence sought to be tested is material to the issue of the
21 convicted person's identity as the offender;

22 (5) the requested DNA testing result would raise a reasonable
23 probability that if the results were favorable to the defendant, a
24 motion for a new trial based upon newly discovered evidence would
25 be granted. The court in its discretion may consider any evidence
26 whether or not it was introduced at trial;

27 (6) the evidence sought to be tested meets either of the
28 following conditions:

29 (a) it was not tested previously;

30 (b) it was tested previously, but the requested DNA test would
31 provide results that are reasonably more discriminating and
32 probative of the identity of the offender or have a reasonable
33 probability of contradicting prior test results;

34 (7) the testing requested employs a method generally accepted
35 within the relevant scientific community; and

36 (8) the motion is not made solely for the purpose of delay.

37 e. If the court grants the motion for DNA testing, the court
38 order shall identify the specific evidence to be tested and the DNA
39 technology to be used.

40 (1) If the parties agree upon a mutually acceptable laboratory
41 that is accredited by the American Society of Crime Laboratory
42 Directors Laboratory Accreditation Board or a laboratory that has a
43 certificate of compliance with national standards issued pursuant to
44 42 U.S.C.A. s.14131 from the National Forensic Science
45 Technology Center, the testing shall be conducted by that
46 laboratory.

1 (2) If the parties fail to agree, the testing shall be conducted by
2 the New Jersey State Police Forensic Science Laboratory. For good
3 cause shown, however, the court may direct the evidence to an
4 alternative laboratory that is accredited by the American Society of
5 Crime Laboratory Directors Laboratory Accreditation Board or a
6 laboratory that has a certificate of compliance with national
7 standards issued pursuant to 42 U.S.C.A. s.14131 from the National
8 Forensic Science Technology Center.

9 (3) If a party seeks to conduct DNA testing at a laboratory that
10 is not an NDIS-participating laboratory as defined in section 3 of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 such testing shall be conducted pursuant to the provisions of that
13 section.

14 f. The result of any testing ordered pursuant to this section
15 shall be fully disclosed to the person filing the motion, the
16 prosecutor and the Attorney General. If requested by any party, the
17 court shall order production of the underlying laboratory data and
18 notes.

19 g. The costs of the DNA testing ordered pursuant to this
20 section shall be borne by the convicted person.

21 h. An order granting or denying a motion for DNA testing
22 pursuant to this section may be appealed, pursuant to the Rules of
23 Court.

24 i. DNA testing ordered by the court pursuant to this section
25 shall be done as soon as practicable.

26 j. DNA profile information from biological samples taken
27 from a convicted person pursuant to a motion for post-conviction
28 DNA testing in accordance with the provisions of this section shall
29 be treated as confidential and shall not be deemed a public record
30 under P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law
31 concerning access to public records; except as provided in section 2
32 of P.L.2001, c.377 (C.53:1-20.37).

33 k. As used in this act and in section 3 of P.L. , c. (C.)
34 (pending before the Legislature as this bill), the terms "DNA,"
35 "DNA sample," "State DNA databank," "CODIS" and "FBI" shall
36 have the meaning set forth in section 3 of P.L.1994, c.136 (C.53:1-
37 20.19).

38 1. The court may order a law enforcement entity that has access
39 to CODIS to submit DNA profile information obtained from
40 probative biological material from crime scene evidence to
41 determine whether it matches a DNA profile of a known individual
42 or a DNA profile from an unsolved crime.

43 (cf: P.L.2001, c.377, s.1)

44
45 2. Section 5 of P.L.1994, c.136 (C.53:1-20.21) is amended to
46 read as follows:

1 5. Tests shall be performed on each blood or other biological
2 sample submitted pursuant to section 4 of P.L.1994, c.136 (C.53:1-
3 20.20) in order to analyze and type the genetic markers contained in
4 or derived from the DNA. Except insofar as the use of the results
5 of these tests for such purposes would jeopardize or result in the
6 loss of federal funding, the results of these tests shall be used for
7 the following purposes:

8 a. For law enforcement identification purposes, including the
9 identification of a match between DNA profile information obtained
10 from crime scene evidence and the DNA profile of a known
11 individual or the DNA profile from an unsolved crime;

12 b. For development of a population database;

13 c. To support identification research and protocol development
14 of forensic DNA analysis methods;

15 d. To assist in the recovery or identification of human remains
16 from mass disasters or for other humanitarian purposes;

17 e. For research, administrative and quality control purposes;

18 f. For judicial proceedings, by order of the court, if otherwise
19 admissible pursuant to applicable statutes or rules;

20 g. For criminal defense purposes, on behalf of a defendant,
21 who shall have access to relevant samples and analyses performed
22 in connection with the case in which the defendant is charged or
23 convicted; and

24 h. For such other purposes as may be required under federal
25 law as a condition for obtaining federal funding.

26 The DNA record of identification characteristics resulting from
27 the DNA testing conducted pursuant to this section shall be stored
28 and maintained in the State DNA database and forwarded to the FBI
29 for inclusion in CODIS. The DNA sample itself will be stored and
30 maintained in the State DNA databank.

31 (cf: P.L.2003, c.183, s.4)

32
33 3. (New section) a. As used in this section, an “NDIS-
34 participating laboratory” is a laboratory that has been designated to
35 operate the State DNA Index System and participate in the National
36 DNA Index System and CODIS.

37 b. If a party seeks to conduct DNA testing at a non-NDIS-
38 participating laboratory that otherwise meets the requirements set
39 forth in paragraphs (1) and (2) of subsection e. of section 1 of
40 P.L.2001, c.377 (C.2A:84A-32a), the party may request the court to
41 order the NDIS-participating laboratory within the State or relevant
42 jurisdiction to evaluate the non-NDIS-participating laboratory for
43 compliance with the FBI Quality Assurance Standards for Forensic
44 DNA Testing Laboratories for the purpose of uploading crime scene
45 profiles to CODIS. If the court so orders, within 45 days of
46 receiving such a request the NDIS-participating laboratory shall
47 complete the pre-approval process to determine if the non-NDIS-

1 participating laboratory is in compliance with FBI Quality
2 Assurance Standards for Forensic DNA Testing Laboratories, either
3 by conducting its own site visit and assessment of the non-NDIS-
4 participating laboratory or by obtaining and reviewing an on-site
5 visit conducted by the FBI or another NDIS-participating
6 laboratory. In the event that the requirements set forth in the FBI
7 Quality Assurance Standards for Forensic DNA Testing
8 Laboratories as of the effective date of P.L. , c. (C.)
9 (pending before the Legislature as this bill) are amended or
10 otherwise superseded, the NDIS-participating laboratory shall
11 complete such other process as may be prescribed for the
12 assessment of non-NDIS-participating laboratories.

13

14 4. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 Under current law, certain persons convicted of crimes and
20 seeking exoneration may request forensic DNA testing of evidence
21 obtained from the crime scene. This bill is intended to facilitate
22 such testing.

23 The bill: (1) authorizes the court to order law enforcement
24 officials to submit DNA evidence from a crime scene to the
25 Combined DNA Index System (“CODIS”) for testing and to order
26 the State Police laboratory to evaluate private laboratories for
27 compliance with certain FBI standards; and (2) allows convicted
28 persons not currently serving a term of imprisonment to request
29 forensic DNA testing.

30 FORENSIC DNA TESTING AND CODIS: Currently, under section 1
31 of P.L.2001, c.377 (C.2A:84A-32a), the court may order forensic
32 DNA testing upon a motion by a person convicted of a crime and
33 serving a term of imprisonment. However, the statute does not
34 specifically authorize the court to order law enforcement officials to
35 submit crime scene evidence to CODIS for a search to determine
36 whether the evidence matches *another* person: either a known
37 individual or an unknown individual whose DNA profile was
38 obtained from an unsolved crime. This bill would provide the court
39 with that specific authority.

40 PRIVATE LABORATORIES: The bill contains a provision intended
41 to facilitate the use of accredited private labs for forensic DNA
42 analysis. Under federal law, forensic DNA analysis may be
43 conducted by either an “NDIS” lab or an accredited private lab
44 (known as a “non-NDIS” lab), but the private lab must comply with
45 certain additional requirements if the samples are to be uploaded to
46 CODIS for a search for potential DNA matches. (An NDIS lab is
47 one that has been designated to operate the State DNA Index

1 System and participate in the National DNA Index System and
2 CODIS.)

3 Because private labs do not have direct access to the CODIS
4 database, any DNA profiles they produce can be uploaded to the
5 system only with the assistance of an NDIS lab. In addition, before
6 testing any samples in a particular case, the private lab must be
7 evaluated by an NDIS lab and receive pre-approval in order for
8 samples to be eligible for uploading to CODIS for a search for
9 potential matches. Currently, if DNA samples are tested by an
10 accredited lab but the lab has not been pre-approved by an NDIS
11 lab, the results of the testing may be used in court, but may not be
12 uploaded to CODIS for a search for potential matches. The bill
13 provides that if a party seeks to conduct DNA analysis at a private
14 lab that otherwise meets the accreditation requirements set forth in
15 section 1 of P.L.2001, c.377 (C.2A:84A-32a), that party may
16 request the court to order the NDIS lab to evaluate the private lab.
17 If the court so orders, within 45 days of receiving such a request the
18 NDIS lab would be required to complete the pre-approval process to
19 determine if the private lab is in compliance with FBI Quality
20 Assurance Standards for Forensic DNA Testing Laboratories, either
21 by conducting its own site visit and assessment of the private lab or
22 by obtaining and reviewing an on-site visit conducted by the FBI or
23 another NDIS lab. The bill also provides that in the event that the
24 FBI requirements are amended or otherwise superseded, the NDIS
25 lab would be required to complete such other process as may be
26 prescribed for the assessment.

27 MOTION BY PERSON CONVICTED OF A CRIME: Under the statute,
28 any person who has been convicted of a crime and is currently
29 serving a term of imprisonment may make a motion before the court
30 for forensic DNA testing. The bill provides that any person who
31 has been convicted of a crime may make such a motion, whether or
32 not the person is currently imprisoned.

33 CLARIFYING AMENDMENT: The bill also amends the "DNA
34 Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-
35 20.17 et seq.), which requires persons convicted of crimes or
36 arrested for certain crimes to submit blood or other biological
37 samples for DNA testing. Under the statute, the test results are used
38 for various purposes, including law enforcement identification;
39 research and protocol development of forensic DNA analysis
40 methods; and criminal defense on behalf of a defendant *charged*
41 with a crime. This bill would clarify that the test results could also
42 be used for defense purposes on behalf of a defendant convicted of
43 a crime, and for the purpose of identifying a match between DNA
44 profile information obtained from crime scene evidence and the
45 DNA profile of a known individual or the DNA profile from an
46 unsolved crime.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1678

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 18, 2014

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 1678.

As amended and reported by the committee, Assembly Bill No. 1678: (1) authorizes the court to order law enforcement officials to submit DNA evidence from a crime scene to the Combined DNA Index System (“CODIS”) for testing and to order the State Police laboratory to evaluate private laboratories for compliance with certain FBI standards; and (2) allows convicted persons not currently serving a term of imprisonment to request forensic DNA testing. Under current law, certain persons convicted of crimes and seeking exoneration may request forensic DNA testing of evidence obtained from the crime scene. This bill is intended to facilitate such testing.

Currently, under section 1 of P.L.2001, c.377 (C.2A:84A-32a), the court may order forensic DNA testing upon a motion by a person convicted of a crime and serving a term of imprisonment. However, the statute does not specifically authorize the court to order law enforcement officials to submit crime scene evidence to CODIS for a search to determine whether the evidence matches *another* person: either a known individual or an unknown individual whose DNA profile was obtained from an unsolved crime. This bill would provide the court with that specific authority provided that the testing laboratory meets certain criteria set forth under the bill.

The bill contains a provision intended to facilitate the use of accredited private labs for forensic DNA analysis. Under federal law, forensic DNA analysis may be conducted by either an “NDIS” lab or an accredited private non-NDIS lab, but the private lab is required to comply with certain additional requirements if the samples are to be uploaded to CODIS for a search for potential DNA matches. (An NDIS lab is one that has been designated to operate the State DNA Index System and participate in the National DNA Index System and CODIS.)

Because private labs do not have direct access to the CODIS database, any DNA profiles they produce can be uploaded to the system only with the assistance of an NDIS lab. In addition, before

testing any samples in a particular case, the private lab is required to be evaluated by an NDIS lab and receive pre-approval in order for samples to be eligible for uploading to CODIS for a search for potential matches. Currently, if DNA samples are tested by an accredited lab which has not been pre-approved by an NDIS lab, the results of the testing may be used in court, but may not be uploaded to CODIS for a search for potential matches. This bill provides that if a party seeks to conduct DNA analysis at a private lab that otherwise meets the accreditation requirements set forth in section 1 of P.L.2001, c.377 (C.2A:84A-32a), and the party seeks to order a CODIS search, that party may request the court to order the NDIS lab to evaluate the private lab. If the court so orders, within 120 days of receiving such a request the NDIS lab would be required to complete the pre-approval process to determine if the private lab is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories, either by conducting its own site visit and assessment of the private lab or by obtaining and reviewing an on-site visit conducted by the FBI or another NDIS lab. The bill also provides that in the event that the FBI requirements are amended or otherwise superseded, the NDIS lab would be required to complete any other process as may be prescribed for the assessment. Under the amended bill, the convicted person would assume any cost associated with an on-site visit of the private lab.

Current law provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make a motion before the court for forensic DNA testing. Under the bill, any person who has been convicted of a crime may make such a motion, whether or not the person is currently imprisoned.

It is the committee's understanding that the bill does not affect or interfere with the Attorney General Guidelines for the Retention of Evidence, which are to continue governing the retention of evidence by law enforcement agencies in criminal cases. Additionally, the provisions of the bill would not create any additional fiscal impact or other requirement relating to the retention of evidence.

The bill also amends the "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.), which requires persons convicted of crimes or arrested for certain crimes to submit blood or other biological samples for DNA testing. Under the statute, the test results are used for various purposes, including law enforcement identification; research and protocol development of forensic DNA analysis methods; and criminal defense on behalf of a defendant *charged* with a crime. This bill would clarify that the test results could also be used for defense purposes on behalf of a defendant convicted of a crime, and for the purpose of identifying a match between DNA profile information obtained from crime scene evidence and the DNA profile of a known individual or the DNA profile from an unsolved crime.

This bill was pre-filed for introduction in the 2014-2015 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As amended and reported by the committee, this bill is identical to Senate Bill No. 1365, also amended and reported by the Senate Judiciary Committee on this same date.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) clarify that the defendant will incur costs for in-person site visits conducted by an NDIS lab when pre-approving a private lab;
- 2) replace references to the “American Society of Crime Laboratory Directors Laboratory Accreditation Board” with references to a nonprofit professional association that is approved by the FBI Director in accordance with the Federal DNA Identification Act;
- 3) extend from 45 to 120 days the timeframe for an NDIS lab to complete a pre-approval process when ordered by a court to determine if the private lab is in compliance with FBI Quality Assurance Standards for Forensic DNA;
- 4) ensure that New Jersey State Labs participate in CODIS by requiring that private labs be pre-approved, satisfactorily meet site visit and audit requirements, use the same testing platform as the law enforcement entity, and generate DNA profiles that meet FBI Quality Assurance Standards for Forensic DNA and NDIS standards; and
- 5) clarify that the bill does not affect or interfere with the Attorney General Guidelines for the Retention of Evidence or create additional fiscal impact or any other requirement relating to the retention of evidence.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1678

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2014

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1678 (1R), with committee amendments.

As amended, this bill, (1) provides for certain forensic DNA evidence obtained from a crime scene to be submitted to the Combined DNA Index System (CODIS) for testing, (2) authorizes the court to order the State Police laboratory to evaluate private laboratories for compliance with certain Federal Bureau of Investigation (FBI) standards, and (3) allows convicted persons not serving a term of imprisonment to request forensic DNA testing.

FORENSIC DNA TESTING AND CODIS: Currently, under section 1 of P.L.2001, c.377 (C.2A:84A-32a), the court may order forensic DNA testing upon a motion by a person convicted of a crime and serving a term of imprisonment. However, current law does not provide for the court to order DNA profile information obtained from crime scene evidence to be submitted to CODIS for a search to determine whether the evidence matches *another* person: either a known individual or an unknown individual whose DNA profile was obtained from an unsolved crime. This bill provides the court with the authority to require DNA evidence to be submitted to CODIS for testing, provided the use of the results of this testing does not: (1) conflict with FBI, CODIS, or other federal standards or requirements, (2) jeopardize, or result in the loss of federal funding, or (3) jeopardize, or result in the loss of, the State's ability to participate in or maintain access to CODIS.

EVALUATION OF PRIVATE LABORATORIES: The bill facilitates the use of accredited private laboratories for forensic DNA analysis. Under federal law, forensic DNA analysis may be conducted by either an "NDIS" laboratory or an accredited private non-NDIS laboratory, but the private laboratory is required to comply with certain additional requirements if the samples are to be uploaded to CODIS for a search for potential DNA matches. (An NDIS laboratory is one that has been designated to operate the State DNA Index System and participate in the National DNA Index System and CODIS.)

Because private laboratories do not have direct access to the CODIS database, any DNA profiles they produce can be uploaded to the system only with the assistance of an NDIS laboratory. Additionally, before testing any samples in a particular case, the private laboratory is required to be evaluated by an NDIS laboratory and receive pre-approval for samples to be eligible for uploading to CODIS for a search for potential matches. Currently, if DNA samples are tested by an accredited laboratory which has not been pre-approved by an NDIS laboratory, the results of the testing may be used in court, but may not be uploaded to CODIS for a search for potential matches.

This bill provides that if a party seeks to conduct DNA analysis at a private laboratory that otherwise meets the accreditation requirements set forth in section 1 of P.L.2001, c.377 (C.2A:84A-32a), and the party seeks to order a CODIS search, that party may request the court to order the NDIS laboratory to evaluate the private laboratory. If the court so orders, within 120 days of receiving such a request the NDIS laboratory will be required to complete the pre-approval process to determine if the private laboratory is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories, either by conducting its own site visit and assessment of the private laboratory or by obtaining and reviewing an on-site visit conducted by the FBI or another NDIS laboratory. The bill provides that if the FBI requirements are amended or superseded, the NDIS laboratory will be required to complete any other process as may be prescribed for the assessment. Under the bill, the convicted person is required to bear the cost associated with an on-site visit of the private laboratory.

MOTION BY PERSON CONVICTED OF A CRIME: Current law provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make a motion before the court for forensic DNA testing. Under the bill, any person who has been convicted of a crime may make a motion for testing, regardless of whether the person is currently serving a term of imprisonment.

INTERPRETATION AND IMPLEMENTATION: The bill provides that its provisions are not to be construed to create a right, obligation, or requirement regarding the preservation of evidence, or to provide a basis for a remedy or cause of action based on a failure to preserve or retain evidence. Additionally, the bill provides that its provisions are not to be construed to affect or modify the Guidelines for the Retention of Evidence, and any successor guidelines, promulgated by the Attorney General.

CLARIFYING AMENDMENT: The bill amends the “DNA Database and Databank Act of 1994,” P.L.1994, c.136 (C.53:1-20.17 et seq.), which requires persons convicted of crimes or arrested for certain crimes to submit blood or other biological samples for DNA testing. Under the law, the test results are used for various purposes, including law enforcement identification; research and protocol development of

forensic DNA analysis methods; and criminal defense on behalf of a defendant *charged* with a crime. This bill clarifies that test results could also be used for defense purposes on behalf of a defendant convicted of a crime, and for the purpose of identifying a match between DNA profile information obtained from crime scene evidence and the DNA profile of a known individual or the DNA profile from an unsolved crime.

EFFECTIVE DATE: The bill takes effect on the first day of the fourth month next following the date of enactment.

FISCAL IMPACT:

The Office of Legislative Services estimates the number of persons affected by the bill will be relatively small since it allows individuals who are no longer incarcerated to be eligible for post-conviction DNA testing to prove their innocence. Given the limited number of people impacted, the cost, including time spent evaluating a private laboratory by a State NDIS laboratory which is to be paid by the convicted person, is projected to be minimal.

The bill allows a court to order a law enforcement entity with access to CODIS to submit certain crime scene evidence to a testing laboratory, if it meets certain criteria. This provision is not expected to place any financial responsibility on a court.

DNA testing at private laboratories offers some parties more specialized technology at shorter wait intervals compared to some state laboratories. Under the bill, a court could order one of the two NDIS participating laboratories in New Jersey to determine if a private laboratory is in compliance with federal standards. The law enforcement entity is responsible for submitting the evidence, but the financial onus is on the private laboratory to meet federal standards and satisfactorily complete proficiency tests, site visits, and audits. If DNA testing and a CODIS search took place at a non-NDIS participating laboratory, the cost associated with an on-site visit would be the responsibility of the convicted person. While an NDIS laboratory in this State would need to evaluate private laboratories for compliance with federal requirements, the State laboratory may be able to obtain a site survey conducted by another state's laboratory. As a result, the financial impact on the State is expected to be negligible.

Further, the bill creates no additional responsibilities on law enforcement agencies with regards to evidence retention.

COMMITTEE AMENDMENTS:

The amendments eliminate provisions that directed the court to compel an NDIS-participating laboratory performing a CODIS search to conduct the testing in accordance with section 3 of the bill, clarify the conditions under which DNA evidence is to be submitted to

CODIS for testing, and revise provisions that specify how the bill is to be construed.

The amendments also delay the effective date of the bill until the first day of the fourth month next following the date of enactment.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1678

STATE OF NEW JERSEY 216th LEGISLATURE

DATED: OCTOBER 28, 2014

SUMMARY

- Synopsis:** Authorizes court to order law enforcement to submit DNA evidence to national database to determine whether the evidence matches a known individual or a DNA profile from an unsolved crime.
- Type of Impact:** Minimal, if any, expenditure increase.
- Agencies Affected:** Department of Law and Public Safety, Division of State Police, law enforcement agencies, State laboratories participating in the National DNA Index System

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal increase, if any – See comments below		

- The Office of Legislative Services projects that only a small number of persons would be affected by this bill and the bill would not create any fiscal impact relating to the retention of evidence; therefore, the cost of implementation is expected to be minimal.
- Assembly Bill No. 1678 (1R) provides the court with the specific authority to order law enforcement officials to submit crime scene evidence to the Combined DNA Index System (CODIS) to determine whether the evidence matches another person, provided that the testing laboratory meets certain criteria.
- Under the bill, if a party seeks to conduct DNA analysis at a private laboratory and order a CODIS search, that party may request the court to order the National DNA Index System (NDIS) laboratory to evaluate the private laboratory. If ordered by the court, the NDIS laboratory would be required to complete the pre-approval process to determine if the private laboratory is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories. A convicted person would assume the cost associated with an on-site visit of the private laboratory.

BILL DESCRIPTION

Assembly Bill No. 1678 (1R) of 2014 authorizes the court to order law enforcement officials to submit DNA evidence from a crime scene to the CODIS for testing and to order the State Police laboratory to evaluate private laboratories for compliance with certain FBI standards, and allows convicted persons not currently serving a term of imprisonment to request forensic DNA testing. Under current law, certain persons convicted of crimes and seeking exoneration may request forensic DNA testing of evidence obtained from the crime scene; this bill is intended to facilitate such testing.

Currently, under N.J.S.A.2A:84A-32a, the court may order forensic DNA testing upon a motion by a person convicted of a crime and serving a term of imprisonment. However, the statute does not specifically authorize the court to order law enforcement officials to submit crime scene evidence to CODIS for a search to determine whether the evidence matches *another* person: either a known individual or an unknown individual whose DNA profile was obtained from an unsolved crime. This bill provides the court with that specific authority, provided that the testing laboratory meets certain criteria set forth under the bill.

The bill contains a provision intended to facilitate the use of accredited private laboratories for forensic DNA analysis. Under federal law, forensic DNA analysis may be conducted by either an NDIS laboratory (designated to operate the State DNA Index System and participate in the National DNA Index System and CODIS) or an accredited private non-NDIS laboratory; however, the private laboratories are required to comply with certain additional requirements if the samples are to be uploaded to CODIS for a search for potential DNA matches.

Because private laboratories do not have direct access to the CODIS database, any DNA profiles they produce can be uploaded to the system only with the assistance of an NDIS laboratory. In addition, before testing any samples in a particular case, the private laboratory is required to be evaluated by an NDIS laboratory and receive pre-approval in order for samples to be eligible for uploading to CODIS for a search for potential matches. Currently, if DNA samples are tested by an accredited laboratory which has not been pre-approved by an NDIS laboratory, the results of the testing may be used in court, but may not be uploaded to CODIS for a search for potential matches. This bill provides that if a party seeks to conduct DNA analysis at a private laboratory that otherwise meets the accreditation requirements set forth in N.J.S.A.2A:84A-32a, and the party seeks to order a CODIS search, that party may request the court to order the NDIS laboratory to evaluate the private laboratory. If the court so orders, within 120 days of receiving such a request the NDIS laboratory would be required to complete the pre-approval process to determine if the private laboratory is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories, either by conducting its own site visit and assessment of the private laboratory or by obtaining and reviewing an on-site visit conducted by the FBI or another NDIS laboratory. The bill also provides that in the event that the FBI requirements are amended or otherwise superseded, the NDIS laboratory would be required to complete any other process as may be prescribed for the assessment. The convicted person would assume any cost associated with an on-site visit of the private laboratory.

Current law provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make a motion before the court for forensic DNA testing. Under the bill, any person who has been convicted of a crime may make such a motion, whether or not the person is currently imprisoned.

The bill is not intended to affect or interfere with the Attorney General Guidelines for the Retention of Evidence, which are to continue governing the retention of evidence by law enforcement agencies in criminal cases. Additionally, the provisions of the bill would not create any additional fiscal impact or other requirement relating to the retention of evidence.

The bill also amends the “DNA Database and Databank Act of 1994,” which requires persons convicted of crimes or arrested for certain crimes to submit blood or other biological samples for DNA testing. Under the statute, the test results are used for various purposes, including law enforcement identification; research and protocol development of forensic DNA analysis methods; and criminal defense on behalf of a defendant *charged* with a crime. This bill would clarify that the test results could also be used for defense purposes on behalf of a defendant convicted of a crime, and for the purpose of identifying a match between DNA profile information obtained from crime scene evidence and the DNA profile of a known individual or the DNA profile from an unsolved crime.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the number of persons affected by the bill would be relatively small since it would allow individuals who are no longer incarcerated to be eligible for post-conviction DNA testing to prove their innocence. Given the small number of people impacted, the cost, including time spent evaluating a private laboratory by a State NDIS laboratory which is to be paid by the convicted person, is projected to be minimal.

The bill allows a court to order a law enforcement entity with access to CODIS to submit certain crime scene evidence to a testing laboratory, if it meets certain criteria. This would not place any financial responsibility on a court.

DNA testing at private laboratories offers some parties more specialized technology at shorter wait intervals compared to some state laboratories. Under the bill, a court could order one of the two NDIS participating laboratories in New Jersey to determine if a private laboratory is in compliance with federal standards. The law enforcement entity would be responsible for submitting the evidence, but the financial onus would be on the private laboratory to meet federal standards and satisfactorily complete proficiency tests, site visits, and audits. If DNA testing and a CODIS search took place at a non-NDIS participating laboratory, the cost associated with an on-site visit would be the responsibility of the convicted person. While an NDIS laboratory in this State would need to evaluate private laboratories for compliance with federal requirements, the State laboratory may be able to obtain a site survey conducted by another state’s laboratory. As a result, the financial impact on the State would be negligible.

Further, the bill creates no additional responsibilities on law enforcement agencies with regards to evidence retention.

Section: Law and Public Safety

Analyst: Amy Denholtz
Senior Research Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 1678

STATE OF NEW JERSEY 216th LEGISLATURE

DATED: DECEMBER 23, 2014

SUMMARY

- Synopsis:** Authorizes court to order law enforcement to submit DNA evidence to national database to determine whether the evidence matches a known individual or a DNA profile from an unsolved crime.
- Type of Impact:** Minimal, if any, expenditure increase.
- Agencies Affected:** Department of Law and Public Safety, Division of State Police, law enforcement agencies, State laboratories participating in the National DNA Index System

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal increase, if any – See comments below		

- The Office of Legislative Services projects that only a small number of persons would be affected by this bill and the bill would not create any fiscal impact relating to the retention of evidence; therefore, the cost of implementation is expected to be minimal.
- This bill provides the court with authority to order law enforcement officials to submit crime scene evidence to the Combined DNA Index System (CODIS) to determine whether the evidence matches another person, provided that the testing laboratory meets certain criteria.
- Under the bill, if a party seeks to conduct DNA analysis at a private laboratory and order a CODIS search, that party may request the court to order the National DNA Index System (NDIS) laboratory to evaluate the private laboratory. If ordered by the court, the NDIS laboratory would be required to complete the pre-approval process to determine if the private laboratory is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories. A convicted person would assume the cost associated with an on-site visit of the private laboratory.

BILL DESCRIPTION

Assembly Bill No. 1678 (2R) of 2014 provides for certain forensic DNA evidence obtained from a crime scene to be submitted to the CODIS for testing, authorizes the court to order the State Police laboratory to evaluate private laboratories for compliance with certain Federal Bureau of Investigation (FBI) standards, and permits convicted persons not serving a term of imprisonment to request forensic DNA testing.

Currently, under N.J.S.A.2A:84A-32a, the court may order forensic DNA testing upon a motion by a person convicted of a crime and serving a term of imprisonment. However, the statute does not specifically authorize the court to order law enforcement officials to submit crime scene evidence to CODIS for a search to determine whether the evidence matches *another* person: either a known individual or an unknown individual whose DNA profile was obtained from an unsolved crime. This bill provides the court with that specific authority, provided that the testing laboratory meets certain criteria set forth under the bill.

The bill contains a provision intended to facilitate the use of accredited private laboratories for forensic DNA analysis. Under federal law, forensic DNA analysis may be conducted by either an NDIS laboratory (designated to operate the State DNA Index System and participate in the National DNA Index System and CODIS) or an accredited private non-NDIS laboratory; however, the private laboratories are required to comply with certain additional requirements if the samples are to be uploaded to CODIS for a search for potential DNA matches. Because private laboratories do not have direct access to the CODIS database, any DNA profiles they produce can be uploaded to the system only with the assistance of an NDIS laboratory. In addition, before testing any samples in a particular case, the private laboratory is required to be evaluated by an NDIS laboratory and receive pre-approval in order for samples to be eligible for uploading to CODIS for a search for potential matches. Currently, if DNA samples are tested by an accredited laboratory which has not been pre-approved by an NDIS laboratory, the results of the testing may be used in court, but may not be uploaded to CODIS for a search for potential matches.

This bill provides that if a party seeks to conduct DNA analysis at a private laboratory that otherwise meets the accreditation requirements set forth in N.J.S.A.2A:84A-32a, and the party seeks to order a CODIS search, that party may request the court to order the NDIS laboratory to evaluate the private laboratory. If the court so orders, within 120 days of receiving such a request the NDIS laboratory would be required to complete the pre-approval process to determine if the private laboratory is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories, either by conducting its own site visit and assessment of the private laboratory or by obtaining and reviewing an on-site visit conducted by the FBI or another NDIS laboratory. The bill also provides that in the event that the FBI requirements are amended or otherwise superseded, the NDIS laboratory would be required to complete any other process as may be prescribed for the assessment. The convicted person would assume any cost associated with an on-site visit of the private laboratory.

Current law provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make a motion before the court for forensic DNA testing.

Under the bill, any person who has been convicted of a crime may make such a motion, whether or not the person is currently imprisoned.

The bill provides that its provisions are not to be construed to create a right, obligation, or requirement regarding the preservation of evidence, or to provide a basis for a remedy or cause of action based on a failure to preserve or retain evidence. Additionally, the bill provides that its provisions are not to be construed to affect or modify the Guidelines for the Retention of Evidence promulgated by the Attorney General.

The bill also amends the “DNA Database and Databank Act of 1994,” which requires persons convicted of crimes or arrested for certain crimes to submit blood or other biological samples for DNA testing. Under the statute, the test results are used for various purposes, including law enforcement identification; research and protocol development of forensic DNA analysis methods; and criminal defense on behalf of a defendant charged with a crime. This bill would clarify that the test results could also be used for defense purposes on behalf of a defendant convicted of a crime, and for the purpose of identifying a match between DNA profile information obtained from crime scene evidence and the DNA profile of a known individual or the DNA profile from an unsolved crime.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the number of persons affected by the bill would be relatively small since it would allow individuals who are no longer incarcerated to be eligible for post-conviction DNA testing to prove their innocence. Given the small number of people impacted, the cost, including time spent evaluating a private laboratory by a State NDIS laboratory which is to be paid by the convicted person, is projected to be minimal.

The bill allows a court to order a law enforcement entity with access to CODIS to submit certain crime scene evidence to a testing laboratory, if it meets certain criteria. This provision is not expected to place any financial responsibility on a court.

DNA testing at private laboratories offers some parties more specialized technology at shorter wait intervals compared to some state laboratories. Under the bill, a court could order one of the two NDIS participating laboratories in New Jersey to determine if a private laboratory is in compliance with federal standards. The law enforcement entity would be responsible for submitting the evidence, but the financial onus would be on the private laboratory to meet federal standards and satisfactorily complete proficiency tests, site visits, and audits. If DNA testing and a CODIS search took place at a non-NDIS participating laboratory, the cost associated with an on-site visit would be the responsibility of the convicted person. While an NDIS laboratory in this State would need to evaluate private laboratories for compliance with federal requirements, the State laboratory may be able to obtain a site survey conducted by another state’s laboratory. As a result, the financial impact on the State would be negligible.

Further, the bill creates no additional responsibilities on law enforcement agencies with regards to evidence retention.

Section: Law and Public Safety
Analyst: Kristin Brunner Santos
Senior Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY SUBSTITUTE FOR
ASSEMBLY, No. 1678
STATE OF NEW JERSEY
216th LEGISLATURE

DATED: JUNE 16, 2015

SUMMARY

- Synopsis:** Authorizes court to order law enforcement to submit DNA evidence to national database to determine whether the evidence matches a known individual or a DNA profile from an unsolved crime.
- Type of Impact:** Minimal, if any, expenditure increase.
- Agencies Affected:** Department of Law and Public Safety, Division of State Police, law enforcement agencies, State laboratories participating in the National DNA Index System.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal, if any, expenditure increase – See comments below		

- The Office of Legislative Services projects that only a small number of persons would be affected by this bill and the bill would not create any fiscal impact relating to the retention of evidence; therefore, the cost of implementation is expected to be minimal.
- This bill provides the court with authority to order law enforcement officials to submit crime scene evidence to the Combined DNA Index System (CODIS) and evaluate certain laboratories for compliance with federal standards. The bill also permits eligible persons who were convicted of crimes to request DNA forensic testing.
- Under the bill, if an eligible party seeks to conduct DNA analysis at a non-National DNA Index System (NDIS) laboratory and order a CODIS search, that party may request the court to order the NDIS laboratory to evaluate the non-NDIS laboratory. If ordered by the court, the NDIS laboratory would be required to complete the pre-approval process to determine if the non-NDIS laboratory is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories. The requesting party would bear the cost associated with an on-site visit and assessment of the non-NDIS laboratory.

BILL DESCRIPTION

The Assembly Substitute for Assembly Bill No. 1678 of 2015 (1) provides for certain forensic DNA evidence obtained from a crime scene to be submitted to the Combined DNA Index System (CODIS) for testing, (2) authorizes the court to order the evaluation of certain laboratories for compliance with certain Federal Bureau of Investigation (FBI) standards, and (3) allows certain eligible persons who were convicted of a crime to request forensic DNA testing.

Currently, under section 1 of P.L.2001, c.377 (C.2A:84A-32a), any person who has been convicted of a crime and is serving a term of imprisonment may make a motion before the court for forensic DNA testing. Under the bill, a person who has completed a term of incarceration and demonstrates just cause also may make a motion for forensic DNA testing. A court may find that just cause exists when there is a “significant likelihood” that, if the results of the DNA testing were favorable to the person, a motion for a new trial based upon newly discovered evidence would be granted.

The bill sets a lower standard for a person serving a term of imprisonment at the time the motion is made with the court for forensic DNA testing, as opposed to someone who has already served a term of imprisonment. Under the bill, a court may find that just cause exists when there is a “reasonable probability” that, if the results of the DNA testing were favorable to the person, a motion for a new trial based upon newly discovered evidence would be granted.

The Combined DNA Index System (CODIS) is a software program that operates national, state, and local level databases of DNA profiles from convicted offenders, missing persons, and unsolved crime scene evidence. Data stored at the national level is kept in the National DNA Index System (NDIS). An NDIS-laboratory is one that has been designated to operate the State DNA Index System and participate in the National DNA Index System and CODIS.

Under federal law, forensic DNA analysis may be conducted by either an “NDIS” laboratory or an accredited non-NDIS laboratory. However, the accredited non-NDIS laboratory is required to comply with certain additional conditions if the samples are to be uploaded to CODIS for a search for potential DNA matches.

Under this bill, if evidence tested at a non-NDIS laboratory reveals a DNA profile that is not the convicted person or a victim, a court is authorized to direct the prosecuting authority to request the State Police forensic DNA laboratory or other NDIS participating laboratory to submit DNA evidence to CODIS in order to determine whether the evidence matches a DNA profile from an unsolved crime or of a known individual.

Because non-NDIS laboratories do not have direct access to the CODIS database, any DNA profiles they produce can be uploaded to the system only with the assistance of an NDIS laboratory. Additionally, before testing any samples in a particular case, the non-NDIS laboratory is required to be evaluated by an NDIS laboratory and receive preapproval for samples to be eligible for uploading to CODIS for a search for potential matches. Currently, if DNA samples are tested by an accredited laboratory which has not been pre-approved by an NDIS laboratory, the results of the testing may be used in court, but may not be uploaded to CODIS for a search for potential matches.

Under this bill, if a party seeks to conduct DNA analysis at a non-NDIS laboratory that otherwise meets the accreditation requirements set forth in section 1 of P.L.2001, c.377 (C.2A:84A-32a), and the party seeks to order a CODIS search, that party may request the court to order the NDIS laboratory to evaluate the non-NDIS laboratory. Prior to requesting the CODIS search, the party is required to notify the Attorney General and the NDIS laboratory that would be conducting the evaluation. The bill permits the Attorney General to appear on the motion on his own behalf or the behalf of the NDIS laboratory, if the laboratory is a public entity.

If the court grants the motion, within 120 days of receiving the court order, the NDIS laboratory will be required to complete the pre-approval process to determine if the non-NDIS laboratory is in compliance with the FBI standards by obtaining and reviewing the records of an on-site visit conducted by the FBI or another NDIS laboratory. If an on-site visit and assessment have not been conducted within the federally required time frames or the non-NDIS laboratory does not comply with other applicable standards, or the results of an on-site visit and assessment are unavailable, the NDIS-participating laboratory may conduct its own on-site visit.

Under the bill, a determination by the NDIS laboratory as to whether the laboratory at which the party seeks to conduct DNA testing is in compliance with the FBI standards would not be subject to judicial review. The substitute further provides that if the FBI requirements are amended or superseded, the NDIS laboratory will be required to complete any other process as may be prescribed for the assessment.

The bill provides that its provisions are not to be construed to create a right, obligation, or requirement regarding the preservation of evidence, or to provide a basis for a remedy or cause of action based on a failure to preserve or retain evidence. The bill further provides that its provisions are not to be construed to affect or modify the Guidelines for the Retention of Evidence, and any successor guidelines, promulgated by the Attorney General.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services projects that only a small number of persons would be affected by this bill and the bill would not create any fiscal impact relating to the retention of evidence; therefore, the cost of implementation is expected to be minimal.

The bill allows a court to order the NDIS laboratory to conduct an evaluation of a non-NDIS laboratory to ensure federal quality compliance standards are being met if the laboratory requests to enter data into CODIS. This provision is not expected to place any financial responsibility on a court.

The DNA testing at non-NDIS laboratories offers some parties more specialized technology at shorter wait intervals compared to some NDIS laboratories. Under the bill, a court could order one of the two NDIS participating laboratories in New Jersey to determine if the non-NDIS laboratory is in compliance with federal standards. The prosecuting authority would be responsible for submitting the evidence, but the financial onus would be on the moving party to pay for any costs associated with on-site visits and assessments.

While an NDIS laboratory would need to evaluate the non-NDIS laboratories for compliance with federal requirements, the NDIS laboratory may be able to obtain a site survey conducted by the FBI or another NDIS participating laboratory. As a result, the financial impact on the State would be negligible.

Further, the bill creates no additional responsibilities on law enforcement agencies with regards to evidence retention.

Section: Law and Public Safety

*Analyst: Kristin Brunner Santos
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 1365

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED FEBRUARY 27, 2014

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS

Authorizes court to order law enforcement to submit DNA evidence to national database to determine whether the evidence matches a known individual or a DNA profile from an unsolved crime.

CURRENT VERSION OF TEXT

As introduced.



S1365 WEINBERG

2

1 AN ACT concerning DNA evidence, amending P.L.2001, c.377 and
2 P.L.1994, c.136 and supplementing Title 53 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 1 of P.L.2001, c.377 (C.2A:84A-32a) is amended to
9 read as follows:

10 1. a. Any person who was convicted of a crime **and is**
11 **currently serving a term of imprisonment** may make a motion
12 before the trial court that entered the judgment of conviction for the
13 performance of forensic DNA testing.

14 (1) The motion shall be verified by the convicted person under
15 penalty of perjury and shall do all of the following:

16 (a) explain why the identity of the defendant was a significant
17 issue in the case;

18 (b) explain in light of all the evidence, how if the results of the
19 requested DNA testing are favorable to the defendant, a motion for
20 a new trial based upon newly discovered evidence would be
21 granted;

22 (c) explain whether DNA testing was done at any prior time,
23 whether the defendant objected to providing a biological sample for
24 DNA testing, and whether the defendant objected to the
25 admissibility of DNA testing evidence at trial. If evidence was
26 subjected to DNA or other forensic testing previously by either the
27 prosecution or the defense, the court shall order the prosecution or
28 defense to provide all parties and the court with access to the
29 laboratory reports, underlying data and laboratory notes prepared in
30 connection with the DNA testing;

31 (d) make every reasonable attempt to identify both the evidence
32 that should be tested and the specific type of DNA testing sought;
33 and

34 (e) include consent to provide a biological sample for DNA
35 testing.

36 (2) Notice of the motion shall be served on the Attorney
37 General, the prosecutor in the county of conviction, and if known,
38 the governmental agency or laboratory holding the evidence sought
39 to be tested. Responses, if any, shall be filed within 60 days of the
40 date on which the Attorney General and the prosecutor are served
41 with the motion, unless a continuance is granted. The Attorney
42 General or prosecutor may support the motion for DNA testing or
43 oppose it with a statement of reasons and may recommend to the
44 court that if any DNA testing is ordered, a particular type of testing
45 be conducted.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 b. The court, in its discretion, may order a hearing on the
2 motion. The motion shall be heard by the judge who conducted the
3 trial unless the presiding judge determines that judge is unavailable.
4 Upon request of either party, the court may order, in the interest of
5 justice, that the convicted person be present at the hearing of the
6 motion.

7 c. The court shall appoint counsel for the convicted person who
8 brings a motion pursuant to this section if that person is indigent.

9 d. The court shall not grant the motion for DNA testing unless,
10 after conducting a hearing, it determines that all of the following
11 have been established:

12 (1) the evidence to be tested is available and in a condition that
13 would permit the DNA testing that is requested in the motion;

14 (2) the evidence to be tested has been subject to a chain of
15 custody sufficient to establish it has not been substituted, tampered
16 with, replaced or altered in any material aspect;

17 (3) the identity of the defendant was a significant issue in the
18 case;

19 (4) the convicted person has made a prima facie showing that
20 the evidence sought to be tested is material to the issue of the
21 convicted person's identity as the offender;

22 (5) the requested DNA testing result would raise a reasonable
23 probability that if the results were favorable to the defendant, a
24 motion for a new trial based upon newly discovered evidence would
25 be granted. The court in its discretion may consider any evidence
26 whether or not it was introduced at trial;

27 (6) the evidence sought to be tested meets either of the
28 following conditions:

29 (a) it was not tested previously;

30 (b) it was tested previously, but the requested DNA test would
31 provide results that are reasonably more discriminating and
32 probative of the identity of the offender or have a reasonable
33 probability of contradicting prior test results;

34 (7) the testing requested employs a method generally accepted
35 within the relevant scientific community; and

36 (8) the motion is not made solely for the purpose of delay.

37 e. If the court grants the motion for DNA testing, the court
38 order shall identify the specific evidence to be tested and the DNA
39 technology to be used.

40 (1) If the parties agree upon a mutually acceptable laboratory
41 that is accredited by the American Society of Crime Laboratory
42 Directors Laboratory Accreditation Board or a laboratory that has a
43 certificate of compliance with national standards issued pursuant to
44 42 U.S.C.A. s.14131 from the National Forensic Science
45 Technology Center, the testing shall be conducted by that
46 laboratory.

47 (2) If the parties fail to agree, the testing shall be conducted by
48 the New Jersey State Police Forensic Science Laboratory. For good

1 cause shown, however, the court may direct the evidence to an
2 alternative laboratory that is accredited by the American Society of
3 Crime Laboratory Directors Laboratory Accreditation Board or a
4 laboratory that has a certificate of compliance with national
5 standards issued pursuant to 42 U.S.C.A. s.14131 from the National
6 Forensic Science Technology Center.

7 (3) If a party seeks to conduct DNA testing at a non-NDIS-
8 participating laboratory, such testing shall be conducted pursuant to
9 the provisions of section 3 of P.L. , c. (C.) (pending before
10 the Legislature as this bill).

11 f. The result of any testing ordered pursuant to this section
12 shall be fully disclosed to the person filing the motion, the
13 prosecutor and the Attorney General. If requested by any party, the
14 court shall order production of the underlying laboratory data and
15 notes.

16 g. The costs of the DNA testing ordered pursuant to this
17 section shall be borne by the convicted person.

18 h. An order granting or denying a motion for DNA testing
19 pursuant to this section may be appealed, pursuant to the Rules of
20 Court.

21 i. DNA testing ordered by the court pursuant to this section
22 shall be done as soon as practicable.

23 j. DNA profile information from biological samples taken
24 from a convicted person pursuant to a motion for post-conviction
25 DNA testing in accordance with the provisions of this section shall
26 be treated as confidential and shall not be deemed a public record
27 under P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law
28 concerning access to public records; except as provided in section 2
29 of P.L.2001, c.377 (C.53:1-20.37).

30 k. As used in this act and in section 3 of P.L. , c. (C.)
31 (pending before the Legislature as this bill), the terms "DNA,"
32 "DNA sample," DNA databank," "CODIS" and "FBI" shall have the
33 meaning set forth in section 3 of P.L.1994, c.136 (C.53:1-20.19).

34 1. The court may order a law enforcement entity that has access
35 to CODIS to submit DNA profile information obtained from
36 probative biological material from crime scene evidence to
37 determine whether it matches a DNA profile of a known individual
38 or a DNA profile from an unsolved crime.

39 (cf: P.L.2001, c.377, s.1)

40

41 2. Section 5 of P.L.1994, c.136 (C.53:1-20.21) is amended to
42 read as follows:

43 5. Tests shall be performed on each blood or other biological
44 sample submitted pursuant to section 4 of P.L.1994, c.136 (C.53:1-
45 20.20) in order to analyze and type the genetic markers contained in
46 or derived from the DNA. Except insofar as the use of the results
47 of these tests for such purposes would jeopardize or result in the

- 1 loss of federal funding, the results of these tests shall be used for
2 the following purposes:
- 3 a. For law enforcement identification purposes, including the
4 identification of a match between DNA profile information obtained
5 from crime scene evidence and the DNA profile of a known
6 individual or the DNA profile from an unsolved crime;
 - 7 b. For development of a population database;
 - 8 c. To support identification research and protocol development
9 of forensic DNA analysis methods;
 - 10 d. To assist in the recovery or identification of human remains
11 from mass disasters or for other humanitarian purposes;
 - 12 e. For research, administrative and quality control purposes;
 - 13 f. For judicial proceedings, by order of the court, if otherwise
14 admissible pursuant to applicable statutes or rules;
 - 15 g. For criminal defense purposes, on behalf of a defendant,
16 who shall have access to relevant samples and analyses performed
17 in connection with the case in which the defendant is charged or
18 convicted; and
 - 19 h. For such other purposes as may be required under federal
20 law as a condition for obtaining federal funding.

21 The DNA record of identification characteristics resulting from
22 the DNA testing conducted pursuant to this section shall be stored
23 and maintained in the State DNA database and forwarded to the FBI
24 for inclusion in CODIS. The DNA sample itself will be stored and
25 maintained in the State DNA databank.

26 (cf: P.L.2003, c.183, s.4)

27
28 3. (New section) a. As used in this section, an “NDIS-
29 participating laboratory” is a laboratory that has been designated to
30 operate the State DNA Index System and participate in the National
31 DNA Index System and CODIS.

32 b. If a party seeks to conduct DNA testing at a non-NDIS-
33 participating laboratory that otherwise meets the requirements set
34 forth in paragraph 1 and paragraph 4 of section e. of section 1 of
35 P.L.2001, c.377 (C.2A:84A-32a), the party may request the court to
36 order the NDIS-participating laboratory within the State or relevant
37 jurisdiction to evaluate the non-NDIS-participating laboratory for
38 compliance with the FBI Quality Assurance Standards for Forensic
39 DNA Testing Laboratories for the purpose of uploading crime scene
40 profiles to the Combined DNA Index System. If the court so
41 orders, within 45 days of receiving such a request the NDIS-
42 participating laboratory shall complete the pre-approval process to
43 determine if the non-NDIS-participating laboratory is in compliance
44 with FBI Quality Assurance Standards for Forensic DNA Testing
45 Laboratories, either by conducting its own site visit and assessment
46 of the non-NDIS-participating laboratory or by obtaining and
47 reviewing an on-site visit conducted by the FBI or another NDIS-
48 participating laboratory. In the event that the requirements set forth

1 in the FBI Quality Assurance Standards for Forensic DNA Testing
2 Laboratories as of the effective date of P.L. , c. (C.)
3 (pending before the Legislature as this bill) are amended or
4 otherwise superseded, the NDIS-participating laboratory shall
5 complete such other process as may be prescribed for the
6 assessment of non-NDIS-participating laboratories.

7

8 4. This act shall take effect immediately.

9

10

11

STATEMENT

12

13 Under current law, certain persons convicted of crimes and
14 seeking exoneration may request forensic DNA testing of evidence
15 obtained from the crime scene. This bill is intended to facilitate
16 such testing.

17 The bill: (1) authorizes the court to order law enforcement
18 officials to submit DNA evidence from a crime scene to the
19 Combined DNA Index System (“CODIS”) for testing and to order
20 the State Police laboratory to evaluate private laboratories for
21 compliance with certain FBI standards; and (2) allows convicted
22 persons not currently serving a term of imprisonment to request
23 forensic DNA testing.

24 FORENSIC DNA TESTING AND CODIS: Currently, under section 1
25 of P.L.2001, c.377 (C.2A:84A-32a), the court may order forensic
26 DNA testing upon a motion by a person convicted of a crime and
27 serving a term of imprisonment. However, the statute does not
28 specifically authorize the court to order law enforcement officials to
29 submit crime scene evidence to CODIS for a search to determine
30 whether the evidence matches *another* person: either a known
31 individual or an unknown individual whose DNA profile was
32 obtained from an unsolved crime. This bill would provide the court
33 with that specific authority.

34 PRIVATE LABORATORIES: The bill contains a provision intended
35 to facilitate the use of accredited private labs for forensic DNA
36 analysis. Under federal law, forensic DNA analysis may be
37 conducted by either an “NDIS” lab or an accredited private lab
38 (known as a “non-NDIS” lab), but the private lab must comply with
39 certain additional requirements if the samples are to be uploaded to
40 CODIS for a search for potential DNA matches. (An NDIS lab is
41 one that has been designated to operate the State DNA Index
42 System and participate in the National DNA Index System and
43 CODIS.)

44 Because private labs do not have direct access to the CODIS
45 database, any DNA profiles they produce can be uploaded to the
46 system only with the assistance of an NDIS lab. In addition, before
47 testing any samples in a particular case, the private lab must be
48 evaluated by an NDIS lab and receive pre-approval in order for

1 samples to be eligible for uploading to CODIS for a search for
2 potential matches. Currently, if DNA samples are tested by an
3 accredited lab but the lab has not been pre-approved by an NDIS
4 lab, the results of the testing may be used in court, but may not be
5 uploaded to CODIS for a search for potential matches. The bill
6 provides that if a party seeks to conduct DNA analysis at a private
7 lab that otherwise meets the accreditation requirements set forth in
8 P.L.2001, c.377 (C.2A:84A-32a), that party may request the court
9 to order the NDIS lab to evaluate the private lab. If the court so
10 orders, within 45 days of receiving such a request the NDIS lab
11 would be required to complete the pre-approval process to
12 determine if the private lab is in compliance with FBI Quality
13 Assurance Standards for Forensic DNA Testing Laboratories, either
14 by conducting its own site visit and assessment of the private lab or
15 by obtaining and reviewing an on-site visit conducted by the FBI or
16 another NDIS lab. The bill also provides that in the event that the
17 FBI requirements are amended or otherwise superseded, the NDIS
18 lab would be required to complete such other process as may be
19 prescribed for the assessment.

20 MOTION BY PERSON CONVICTED OF A CRIME: Under the statute,
21 any person who has been convicted of a crime and is currently
22 serving a term of imprisonment may make a motion before the court
23 for forensic DNA testing. The bill provides that any person who
24 has been convicted of a crime may make such a motion, whether or
25 not the person is currently imprisoned.

26 CLARIFYING AMENDMENT: The bill also amends the “DNA
27 Database and Databank Act of 1994,” P.L.1994, c.136 (C.53:1-
28 20.17 et seq.), which requires persons convicted of crimes or
29 arrested for certain crimes to submit blood or other biological
30 samples for DNA testing. Under the statute, the test results are used
31 for various purposes, including law enforcement identification;
32 research and protocol development of forensic DNA analysis
33 methods; and criminal defense on behalf of a defendant *charged*
34 with a crime. This bill would clarify that the test results could also
35 be used for defense purposes on behalf of a defendant convicted of
36 a crime, and for the purpose of identifying a match between DNA
37 profile information obtained from crime scene evidence and the
38 DNA profile of a known individual or the DNA profile from an
39 unsolved crime.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1365

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 18, 2014

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1365.

As amended and reported by the committee, Senate Bill No. 1365: (1) authorizes the court to order law enforcement officials to submit DNA evidence from a crime scene to the Combined DNA Index System (“CODIS”) for testing and to order the State Police laboratory to evaluate private laboratories for compliance with certain FBI standards; and (2) allows convicted persons not currently serving a term of imprisonment to request forensic DNA testing. Under current law, certain persons convicted of crimes and seeking exoneration may request forensic DNA testing of evidence obtained from the crime scene. This bill is intended to facilitate such testing.

Currently, under section 1 of P.L.2001, c.377 (C.2A:84A-32a), the court may order forensic DNA testing upon a motion by a person convicted of a crime and serving a term of imprisonment. However, the statute does not specifically authorize the court to order law enforcement officials to submit crime scene evidence to CODIS for a search to determine whether the evidence matches *another* person: either a known individual or an unknown individual whose DNA profile was obtained from an unsolved crime. This bill would provide the court with that specific authority provided that the testing laboratory meets certain criteria set forth under the bill.

The bill contains a provision intended to facilitate the use of accredited private labs for forensic DNA analysis. Under federal law, forensic DNA analysis may be conducted by either an “NDIS” lab or an accredited private non-NDIS lab, but the private lab is required to comply with certain additional requirements if the samples are to be uploaded to CODIS for a search for potential DNA matches. (An NDIS lab is one that has been designated to operate the State DNA Index System and participate in the National DNA Index System and CODIS.)

Because private labs do not have direct access to the CODIS database, any DNA profiles they produce can be uploaded to the system only with the assistance of an NDIS lab. In addition, before testing any samples in a particular case, the private lab is required to

be evaluated by an NDIS lab and receive pre-approval in order for samples to be eligible for uploading to CODIS for a search for potential matches. Currently, if DNA samples are tested by an accredited lab which has not been pre-approved by an NDIS lab, the results of the testing may be used in court, but may not be uploaded to CODIS for a search for potential matches. This bill provides that if a party seeks to conduct DNA analysis at a private lab that otherwise meets the accreditation requirements set forth in section 1 of P.L.2001, c.377 (C.2A:84A-32a), and the party seeks to order a CODIS search, that party may request the court to order the NDIS lab to evaluate the private lab. If the court so orders, within 120 days of receiving such a request the NDIS lab would be required to complete the pre-approval process to determine if the private lab is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories, either by conducting its own site visit and assessment of the private lab or by obtaining and reviewing an on-site visit conducted by the FBI or another NDIS lab. The bill also provides that in the event that the FBI requirements are amended or otherwise superseded, the NDIS lab would be required to complete any other process as may be prescribed for the assessment. Under the amended bill, the convicted person would assume any cost associated with an on-site visit of the private lab.

Current law provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make a motion before the court for forensic DNA testing. Under the bill, any person who has been convicted of a crime may make such a motion, whether or not the person is currently imprisoned.

It is the committee's understanding that the bill does not affect or interfere with the Attorney General Guidelines for the Retention of Evidence, which are to continue governing the retention of evidence by law enforcement agencies in criminal cases. Additionally, the provisions of the bill would not create any additional fiscal impact or other requirement relating to the retention of evidence.

The bill also amends the "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.), which requires persons convicted of crimes or arrested for certain crimes to submit blood or other biological samples for DNA testing. Under the statute, the test results are used for various purposes, including law enforcement identification; research and protocol development of forensic DNA analysis methods; and criminal defense on behalf of a defendant *charged* with a crime. This bill would clarify that the test results could also be used for defense purposes on behalf of a defendant convicted of a crime, and for the purpose of identifying a match between DNA profile information obtained from crime scene evidence and the DNA profile of a known individual or the DNA profile from an unsolved crime.

The committee amendments to the bill:

- clarify that the defendant will incur costs for in-person site visits conducted by an NDIS lab when pre-approving a private lab;
- replace references to the “American Society of Crime Laboratory Directors Laboratory Accreditation Board” with references to a nonprofit professional association that is approved by the FBI Director in accordance with the Federal DNA Identification Act;
- extend from 45 to 120 days the timeframe for an NDIS lab to complete a pre-approval process when ordered by a court to determine if the private lab is in compliance with FBI Quality Assurance Standards for Forensic DNA;
- ensure that New Jersey State Labs participate in CODIS by requiring that private labs be pre-approved, satisfactorily meet site visit and audit requirements, use the same testing platform as the law enforcement entity, and generate DNA profiles that meet FBI Quality Assurance Standards for Forensic DNA and NDIS standards; and
- clarify that the bill does not affect or interfere with the Attorney General Guidelines for the Retention of Evidence or create additional fiscal impact or any other requirement relating to the retention of evidence.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 1678, also amended and reported by the Assembly Law and Public Safety Committee on this same date.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1365

STATE OF NEW JERSEY

DATED: OCTOBER 27, 2014

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1365 (1R).

This bill authorizes the court to order law enforcement officials to submit DNA evidence from a crime scene to the Combined DNA Index System (“CODIS”) for testing and to order the State Police laboratory to evaluate private laboratories for compliance with certain FBI standards; and (2) allows convicted persons not currently serving a term of imprisonment to request forensic DNA testing. Under current law, certain persons convicted of crimes and seeking exoneration may request forensic DNA testing of evidence obtained from the crime scene. This bill is intended to facilitate such testing.

Currently, under section 1 of P.L.2001, c.377 (C.2A:84A-32a), the court may order forensic DNA testing upon a motion by a person convicted of a crime and serving a term of imprisonment. However, the statute does not specifically authorize the court to order law enforcement officials to submit crime scene evidence to CODIS for a search to determine whether the evidence matches *another* person: either a known individual or an unknown individual whose DNA profile was obtained from an unsolved crime. This bill would provide the court with that specific authority provided that the testing laboratory meets certain criteria set forth under the bill.

The bill contains a provision intended to facilitate the use of accredited private labs for forensic DNA analysis. Under federal law, forensic DNA analysis may be conducted by either an “NDIS” lab or an accredited private non-NDIS lab, but the private lab is required to comply with certain additional requirements if the samples are to be uploaded to CODIS for a search for potential DNA matches. (An NDIS lab is one that has been designated to operate the State DNA Index System and participate in the National DNA Index System and CODIS.)

Because private labs do not have direct access to the CODIS database, any DNA profiles they produce can be uploaded to the system only with the assistance of an NDIS lab. In addition, before testing any samples in a particular case, the private lab is required to be evaluated by an NDIS lab and receive pre-approval in order for

samples to be eligible for uploading to CODIS for a search for potential matches. Currently, if DNA samples are tested by an accredited lab which has not been pre-approved by an NDIS lab, the results of the testing may be used in court, but may not be uploaded to CODIS for a search for potential matches. This bill provides that if a party seeks to conduct DNA analysis at a private lab that otherwise meets the accreditation requirements set forth in section 1 of P.L.2001, c.377 (C.2A:84A-32a), and the party seeks to order a CODIS search, that party may request the court to order the NDIS lab to evaluate the private lab. If the court so orders, within 120 days of receiving such a request the NDIS lab would be required to complete the pre-approval process to determine if the private lab is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories, either by conducting its own site visit and assessment of the private lab or by obtaining and reviewing an on-site visit conducted by the FBI or another NDIS lab. The bill also provides that in the event that the FBI requirements are amended or otherwise superseded, the NDIS lab would be required to complete any other process as may be prescribed for the assessment. Under the bill, the convicted person would assume any cost associated with an on-site visit of the private lab.

Current law provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make a motion before the court for forensic DNA testing. Under the bill, any person who has been convicted of a crime may make such a motion, whether or not the person is currently imprisoned.

It is the committee's understanding that the bill does not affect or interfere with the Attorney General Guidelines for the Retention of Evidence, which are to continue governing the retention of evidence by law enforcement agencies in criminal cases. Additionally, the provisions of the bill would not create any additional fiscal impact or other requirement relating to the retention of evidence.

The bill also amends the "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.), which requires persons convicted of crimes or arrested for certain crimes to submit blood or other biological samples for DNA testing. Under the statute, the test results are used for various purposes, including law enforcement identification; research and protocol development of forensic DNA analysis methods; and criminal defense on behalf of a defendant *charged* with a crime. This bill would clarify that the test results could also be used for defense purposes on behalf of a defendant convicted of a crime, and for the purpose of identifying a match between DNA profile information obtained from crime scene evidence and the DNA profile of a known individual or the DNA profile from an unsolved crime.

FISCAL IMPACT:

The Office of Legislative Services estimates that the number of persons affected by the bill would be relatively small since it would allow individuals who are no longer incarcerated to be eligible for post-conviction DNA testing to prove their innocence. Given the small number of people impacted, the cost, including time spent evaluating a private laboratory by a State NDIS laboratory which is to be paid by the convicted person, is projected to be minimal.

The bill allows a court to order a law enforcement entity with access to CODIS to submit certain crime scene evidence to a testing laboratory, if it meets certain criteria. This would not place any financial responsibility on a court.

DNA testing at private laboratories offers some parties more specialized technology at shorter wait intervals compared to some state laboratories. Under the bill, a court could order one of the two NDIS participating laboratories in New Jersey to determine if a private laboratory is in compliance with federal standards. The law enforcement entity would be responsible for submitting the evidence, but the financial onus would be on the private laboratory to meet federal standards and satisfactorily complete proficiency tests, site visits, and audits. If DNA testing and a CODIS search took place at a non-NDIS participating laboratory, the cost associated with an on-site visit would be the responsibility of the convicted person. While an NDIS laboratory in this State would need to evaluate private laboratories for compliance with federal requirements, the State laboratory may be able to obtain a site survey conducted by another state's laboratory. As a result, the financial impact on the State would be negligible.

Further, the bill creates no additional responsibilities on law enforcement agencies with regards to evidence retention.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1365 STATE OF NEW JERSEY 216th LEGISLATURE

DATED: OCTOBER 27, 2014

SUMMARY

- Synopsis:** Authorizes court to order law enforcement to submit DNA evidence to national database to determine whether the evidence matches a known individual or a DNA profile from an unsolved crime.
- Type of Impact:** Minimal, if any, expenditure increase.
- Agencies Affected:** Department of Law and Public Safety, Division of State Police, law enforcement agencies, State laboratories participating in the National DNA Index System

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Minimal increase, if any – See comments below		

- The Office of Legislative Services projects that only a small number of persons would be affected by this bill and the bill would not create any fiscal impact relating to the retention of evidence; therefore, the cost of implementation is expected to be minimal.
- Senate Bill No. 1365 (1R) provides the court with the specific authority to order law enforcement officials to submit crime scene evidence to the Combined DNA Index System (CODIS) to determine whether the evidence matches another person, provided that the testing laboratory meets certain criteria.
- Under the bill, if a party seeks to conduct DNA analysis at a private laboratory and order a CODIS search, that party may request the court to order the National DNA Index System (NDIS) laboratory to evaluate the private laboratory. If ordered by the court, the NDIS laboratory would be required to complete the pre-approval process to determine if the private laboratory is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories. A convicted person would assume the cost associated with an on-site visit of the private laboratory.

BILL DESCRIPTION

Senate Bill No. 1365 (1R) of 2014 authorizes the court to order law enforcement officials to submit DNA evidence from a crime scene to the CODIS for testing and to order the State Police laboratory to evaluate private laboratories for compliance with certain FBI standards, and allows convicted persons not currently serving a term of imprisonment to request forensic DNA testing. Under current law, certain persons convicted of crimes and seeking exoneration may request forensic DNA testing of evidence obtained from the crime scene; this bill is intended to facilitate such testing.

Currently, under N.J.S.A.2A:84A-32a, the court may order forensic DNA testing upon a motion by a person convicted of a crime and serving a term of imprisonment. However, the statute does not specifically authorize the court to order law enforcement officials to submit crime scene evidence to CODIS for a search to determine whether the evidence matches *another* person: either a known individual or an unknown individual whose DNA profile was obtained from an unsolved crime. This bill provides the court with that specific authority, provided that the testing laboratory meets certain criteria set forth under the bill.

The bill contains a provision intended to facilitate the use of accredited private laboratories for forensic DNA analysis. Under federal law, forensic DNA analysis may be conducted by either an NDIS laboratory (designated to operate the State DNA Index System and participate in the National DNA Index System and CODIS) or an accredited private non-NDIS laboratory; however, the private laboratories are required to comply with certain additional requirements if the samples are to be uploaded to CODIS for a search for potential DNA matches.

Because private laboratories do not have direct access to the CODIS database, any DNA profiles they produce can be uploaded to the system only with the assistance of an NDIS laboratory. In addition, before testing any samples in a particular case, the private laboratory is required to be evaluated by an NDIS laboratory and receive pre-approval in order for samples to be eligible for uploading to CODIS for a search for potential matches. Currently, if DNA samples are tested by an accredited laboratory which has not been pre-approved by an NDIS laboratory, the results of the testing may be used in court, but may not be uploaded to CODIS for a search for potential matches. This bill provides that if a party seeks to conduct DNA analysis at a private laboratory that otherwise meets the accreditation requirements set forth in N.J.S.A.2A:84A-32a, and the party seeks to order a CODIS search, that party may request the court to order the NDIS laboratory to evaluate the private laboratory. If the court so orders, within 120 days of receiving such a request the NDIS laboratory would be required to complete the pre-approval process to determine if the private laboratory is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories, either by conducting its own site visit and assessment of the private laboratory or by obtaining and reviewing an on-site visit conducted by the FBI or another NDIS laboratory. The bill also provides that in the event that the FBI requirements are amended or otherwise superseded, the NDIS laboratory would be required to complete any other process as may be prescribed for the assessment. The convicted person would assume any cost associated with an on-site visit of the private laboratory.

Current law provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make a motion before the court for forensic DNA testing. Under the bill, any person who has been convicted of a crime may make such a motion, whether or not the person is currently imprisoned.

The bill is not intended to affect or interfere with the Attorney General Guidelines for the Retention of Evidence, which are to continue governing the retention of evidence by law enforcement agencies in criminal cases. Additionally, the provisions of the bill would not create any additional fiscal impact or other requirement relating to the retention of evidence.

The bill also amends the “DNA Database and Databank Act of 1994,” which requires persons convicted of crimes or arrested for certain crimes to submit blood or other biological samples for DNA testing. Under the statute, the test results are used for various purposes, including law enforcement identification; research and protocol development of forensic DNA analysis methods; and criminal defense on behalf of a defendant *charged* with a crime. This bill would clarify that the test results could also be used for defense purposes on behalf of a defendant convicted of a crime, and for the purpose of identifying a match between DNA profile information obtained from crime scene evidence and the DNA profile of a known individual or the DNA profile from an unsolved crime.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services estimates that the number of persons affected by the bill would be relatively small since it would allow individuals who are no longer incarcerated to be eligible for post-conviction DNA testing to prove their innocence. Given the small number of people impacted, the cost, including time spent evaluating a private laboratory by a State NDIS laboratory which is to be paid by the convicted person, is projected to be minimal.

The bill allows a court to order a law enforcement entity with access to CODIS to submit certain crime scene evidence to a testing laboratory, if it meets certain criteria. This would not place any financial responsibility on a court.

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Further, the bill creates no additional responsibilities on law enforcement agencies with regards to evidence retention.

Section: Law and Public Safety

Analyst: Amy Denholtz
Senior Research Analyst

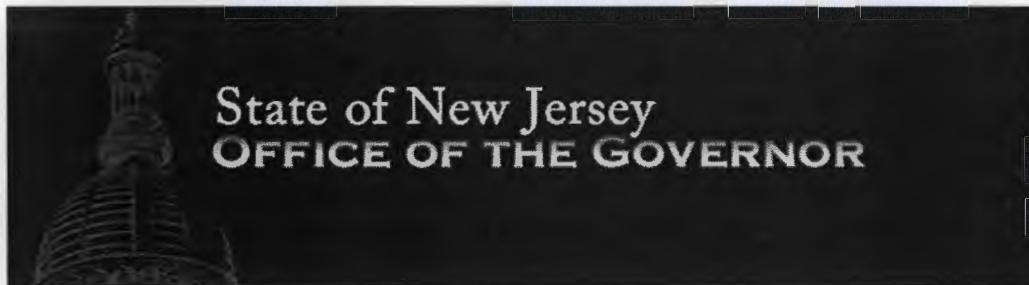
Approved: David J. Rosen
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Christie Takes Action On Pending Legislation

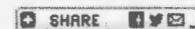
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Trenton, NJ – Governor Chris Christie today took action on legislation, including a package of five bills intended to address the fiscal stability of Atlantic City.

Understanding both the immediate and long-term obstacles facing Atlantic City and its stabilization, the Governor has consistently highlighted the need for comprehensive reform efforts to confront the city's challenges – both from State and local leaders. The Governor remains committed to bringing about the necessary reforms to stabilize Atlantic City and continue an effective long-term transition to an economy that is diversified beyond its traditional gaming industry.

Continuing in that effort, Governor Christie conditionally vetoed A-3981, establishing a payment-in-lieu-of-taxes (PILOT) program for casinos operating in the City, A-3984, reallocating revenue derived from the casino investment alternative tax from the Casino Reinvestment Development Authority to the City to pay debt service on municipal bonds, and A-3985, repealing the Atlantic City Alliance.

"While I commend the Legislature for attempting to devise measures to stabilize the City's budget and finances, I am concerned that the bills, in their present form, fail to recognize the true path to economic revitalization and fiscal stability in the City," Governor Christie said. "While these bills represent the bipartisan efforts of many to provide important, near-term support to the City's immediate challenges, I do not believe they meet the goal of setting a course toward renewed, long-term prosperity and economic growth. To achieve these goals, we must continue our work and go further to ensure that the next step leads to that economically vibrant future for Atlantic City."

In addition, the Governor signed A- 3983, authorizing supplemental school aid to the Atlantic City school district, and vetoed the fifth bill, A-3982, which would add a costly and unjustified new mandate for casino business operation in the City by requiring each casino, as a condition of licensure, to provide to its full time employees "suitable" health care benefits and "suitable" retirement benefits.

"A-3982 would do nothing to enhance the financial condition of Atlantic City," Governor Christie wrote. "To be sure, this bill would make it more costly for casinos to operate in Atlantic City, thereby impeding the industry's ability to grow and expand."

Governor Christie also vetoed legislation designed to revise certain laws concerning domestic violence and firearms. The Christie Administration has made protecting our most vulnerable residents one of its main priorities and has enacted some of the toughest measures to combat domestic violence. Governor Christie has supported a comprehensive approach to addressing the level of violence within our society and recently signed legislation to further penalize aggravated assault perpetuated against domestic violence victims. This legislation, A-4218 (Mosquera, Greenwald, Lagana, Benson, Lampitt, Vainieri Huttle, Danielsen/Weinberg, Gill, Cruz-Perez), substantially restates New Jersey's existing laws that govern firearms and domestic violence and does not offer new and sensible improvements to those current laws. For that reason, rather than restate existing laws, the Governor is proposing significant amendments that will meaningfully deter future acts of violence.

- **Enhanced Penalties For Domestic Violence.** Governor Christie is proposing enhanced criminal penalties imposed against those who are convicted of domestic violence. To demonstrate society's unconditional condemnation of this conduct, perpetrators would receive the maximum available prison sentence under New Jersey law.
- **Tighter Restrictions On Parole Eligibility For Perpetrators Of Domestic Violence.** The Governor's recommended changes will strengthen penalties for perpetrators of domestic abuse by lengthening periods of parole

ineligibility.

- **Prioritizing Victims Who Seek Firearms For Protection.** The Governor is also recommending an immediate codification in statute of new rules currently being processed, giving expedited processing of firearm license applications for victims of domestic violence so that the victims may better defend themselves against future instances of abuse.

"I urge the Legislature to join with me in a bipartisan manner to broaden this bill's approach to reducing domestic violence while simultaneously empowering victims to protect themselves through lawful means," Governor Christie said. "Together, we can enact a more comprehensive approach and reduce the harm that domestic violence inflicts on victims, families, and our society."

The Governor also took the following action on other pending legislation:

BILL SIGNINGS:

S-2174/A-3364 (Barnes, Holzapfel/Quijano, Mainor, Pinkin) - Prohibits manufacture, sale, or installation of counterfeit or nonfunctional air bags in motor vehicles

A-815/S-852 (Coughlin, Ciattarelli, Diegnan, Pinkin, Giblin/Vitale) - Requires municipalities which license peddlers and solicitors to accept certain background check results from other municipalities

A-1029/S-274 (Benson, Vainieri Huttle, Jasey, Tucker, Wimberly/Greenstein, Ruiz) - Requires training program for school bus drivers and school bus aides on interacting with students with special needs, and requires development and use of student information cards

A-1041/S-2676 (Schaer, Johnson, Vainieri Huttle, Eustace, Mazzeo/Rumana, Gordon, Weinberg) - Exempts Holocaust reparations payments from legal process, and from estate recovery under Medicaid program

A-1102/S-1145 (Vainieri Huttle, Sumter, Spencer, Schaer, Wimberly/Weinberg, Cruz-Perez) - Provides for licensure of dementia care homes by DOH

ACS for A-1662/S-2856 (Johnson, Lagana, Wimberly/Weinberg) - Authorizes the court to order the deletion, sealing, labeling, or correction of certain personal information in government records involving certain victims of identity theft

AS for A-1678/SS for S-1365 (Johnson, Mainor, O'Scanlon, Wilson, Wimberly/Weinberg) - Authorizes court to order submission of DNA evidence to national database to determine whether evidence matches known individual or DNA profile from an unsolved crime

AS for ACS for A-2073/SCS for S-712 (Handlin, Space, Garcia, Pintor Marin/Cruz-Perez, Kyrillos, Lesniak) - Exempts certain offers and sales of securities from registration

A-2385/S-944 (McKeon, Diegnan, Jasey, Andrzejczak/Smith, Codey) - Authorizes rural electric cooperative and certain municipalities to establish municipal shared services authority

ACS for A-2477/SCS for S-1705 (Lampitt, Conaway, Benson, Sumter, Munoz, Pinkin/Vitale, Singer) - Establishes requirements for pharmacists to dispense biological products

A-2714/S-1993 (Giblin, Sumter/Barnes) - Requires continuing education for licensed practicing psychologists

A-2936/S-1957 (Mosquera, Lampitt, Singleton, Wimberly/Singer, Connors) - Requires complaint for guardianship of person receiving services from Division of Developmental Disabilities to include one of documents identified in bill

A-3012/S-2296 (Ciattarelli, Dancer/Bateman) - Criminalizes bestiality

A-3079/S-2766 (Jasey, Diegnan, Mainor, Wimberly, Oliver, DeCroce/Turner, Ruiz) - Prohibits administration of standardized assessments in kindergarten through second grade

A-3153/S-2415 (DeAngelo, Mosquera/Madden, Beach) - Requires UI employer contribution reports and remittances be submitted to the Division of Revenue

A-3248/S-2459 (Conaway, Sumter, Pintor Marin/Singer) - Establishes the Task Force on Chronic Obstructive Pulmonary Disease in DOH

A-3580/S-2846 (Moriarty, Dancer, Coughlin, Mainor, Pinkin, Munoz, Danielsens, Wimberly/Madden, Turner) - Prohibits sale of powdered alcohol

A-3636/SCS for S-2393, 2408, 2411 (McKeon, Lagana, Spencer/Scutari, O'Toole, Holzapfel) - Establishes crime-fraud exception to marital and civil union partnership privilege

A-3669/S-2655 (Mazzeo, Burzichelli/Whelan) - Prohibits eligibility for certain sign programs from being conditioned on availability of free drinking water or public telephone

A-3807/S-2619 (Eustace, Greenwald/Whelan) - Permits educational research and services corporations to act as lead procurement agencies for local units and publically supported educational institutions; permits Council of County Colleges to act as lead procurement agency for county colleges

A-3841/S-2540 (Munoz, Gusciora, Angelini, DeCroce/O'Toole, Weinberg) – Upgrades violation of a stalking restraining order to a crime of the third degree

A-3843/S-2735 (Caputo, Giblin, Tucker, Johnson, Mainor, Sumter/Rice) - Permits municipality to enact ordinance allowing voluntary registration of private outdoor video surveillance cameras

A-3983/S-2574 (Mazzeo, Burzichelli, Giblin/Sweeney, Whelan) - Authorizes supplemental State aid to school districts in municipality with significant decrease in commercial property valuation; makes appropriation

A-4008/SCS for S-2334 (Singleton, Mukherji, Pintor Marin, Wimberly, Sumter/Cunningham, Ruiz) - Requires DOC to make reports containing information concerning treatment and reentry initiative participation; requires AOC to establish program that collects recidivism data and make reports concerning adults sentenced to period of probation

A-4013/S-2497 (Greenwald, Lagana, Coughlin/Oroho) - Eliminates mortgage guaranty insurance coverage cap of 25% of outstanding balance of insured loan

A-4073/S-2687 (Schaer, Prieto, Caride, Lagana, Giblin, Wimberly, Rumana/Sarlo, Gill) - Requires installation of carbon monoxide detectors in certain structures; designated as "Korman and Park's Law"

A-4078/S-2686 (Vainieri Huttle, Mosquera, McKeon, Munoz, Benson, Sumter/Pou, Beck) - "Sexual Assault Survivor Protection Act of 2015"; authorizes the court to issue protective orders for victims of certain nonconsensual sexual conduct

A-4089/S-2693 (Coughlin, Ciattarelli/Beach, Singer) - Revises certain provisions of dental service corporation law

A-4143/S-2514 (Lagana, Spencer, Mukherji, Johnson, Rumana, Rodriguez-Gregg, Gusciora, Mazzeo/Barnes, Addiego) - Permits holders of certain alcoholic beverage licenses to be issued amusement game license and updates definition of recognized amusement park

A-4144/S-2755 (Pintor Marin, Spencer, Caride, Quijano, Mukherji/Ruiz, Stack) – Requires insurance producer licensing examination and registration materials to be offered in English and Spanish, and examination instructional materials to be available in Spanish

A-4167/S-2751 (Lagana, Mazzeo, Eustace, Andrzejczak, Vainieri Huttle/Barnes) - Requires DHS to notify enrollees in Programs of All-Inclusive Care for the Elderly of Medicare eligibility

A-4168/S-2750 (Lagana, Mazzeo, Eustace, Andrzejczak, Vainieri Huttle/Barnes) - Requires providers to submit to DHS expenditure details of enrollees in Program of All-Inclusive Care for the Elderly

A-4169/S-2752 (Lagana, Mazzeo, Eustace, Andrzejczak, Vainieri Huttle/Barnes) - Requires DHS to monitor utilization and billing of services for Medicaid home and community-based long-term care

A-4333/S-3020 (Singleton, Gill) - Exempts certain activities of alarm businesses from statutes governing practice of locksmithing

A-4361/S-2891 (Johnson, A.M. Bucco, Garcia, S. Kean/Barnes, A.R. Bucco) - Revises definition of all-terrain vehicles

A-4375/S-3011 (Moriarty, Andrzejczak, Mazzeo, Mosquera, Quijano, Ciattarelli, Wimberly/Van Drew, Bateman) - Upgrades crimes of false public alarm under certain circumstances and establishes reporting requirements concerning crime

A-4485/S-2881 (Diegnan, Jasey, Wimberly, McKeon, Lagana/Gill, Turner) - Prohibits withholding of State school aid based on student participation rate on State assessments

A-4587/S-3049 (Greenwald, Lampitt, McKeon, Holley/Scutari, Cruz-Perez) – Requires facilities providing services to persons with developmental disabilities and schools to adopt policies permitting administration of medical marijuana to qualifying patients

AJR-64/SJR-82 (Schaer, Eustace, Lagana, Spencer, Caride, Mukherji/Pou, Ruiz) - Declares August 16 of each year as "Dominican Restoration Day" in New Jersey

BILLS VETOED:

S-929/A-1908 (Sweeney, Madden/Burzichelli, Riley, Moriarty) – **ABSOLUTE** -Concerns certain workers' compensation supplemental benefits

A-801/S-861 (Coughlin, Wisniewski, Mazzeo/Vitale, Sacco) - **CONDITIONAL** - Directs New Jersey Turnpike Authority and South Jersey Transportation Authority to study and report on potential revenue generating services of rest areas and service plazas

A-947/S-2216 (Singleton, Lagana, Diegnan/Pennacchio, Rice) – **CONDITIONAL** - Requires release of bid list prior to bid date under "Local Public Contracts Law"

A-1468/S-2513 (Diegnan, Lampitt, Caride/Barnes, Ruiz) – **CONDITIONAL** -Establishes Task Force on Engineering Curriculum and Instruction

A-1726/S-308 (Eustace, Lagana, Mosquera, Vainieri Huttle, Wimberly/Gordon) – **CONDITIONAL** - Amends "Flood Hazard Area Control Act" to require DEP to take certain actions concerning delineations of flood hazard areas and

floodplains

A-2579/S-1510 (Mukherji, Pintor Marin, Eustace/Smith, Bateman) – CONDITIONAL - Authorizes municipalities to facilitate private financing of water conservation, storm shelter construction, and flood and hurricane resistance projects through use of voluntary special assessments

A-2771/S-452 (Johnson, Burzichelli, Pintor Marin, Mosquera/Ruiz, Cruz-Perez) – CONDITIONAL - "The New Jersey Social Innovation Act"; establishes social innovation loan pilot program and study commission within EDA

A-2906/S-2926 (Stender, Pinkin, Mazzeo/Whelan, Scutari) – ABSOLUTE - Excludes from gross income compensation paid to members of district boards of election for services rendered in elections

A-3223/S-2056 (Singleton, Lampitt, Quijano, Pintor Marin, Wimberly/Sarlo, Ruiz) – CONDITIONAL - Requires Division of Local Government Services to include certain property tax information on division's web page

A-3393/S-2167 (Spencer, Pintor Marin, Caputo, Tucker/Rice, Ruiz) – CONDITIONAL - Permits Newark to use rental car tax proceeds over three-year period to help reduce its "cash deficit for preceding year" appropriation and operational deficit

A-3421/S-2220 (Dancer, Mukherji/Singer) – CONDITIONAL - Revises the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act"

A-3435/S-2503 (Garcia, Mukherji, Vainieri Huttle, Mainor, Eustace, Mosquera/Stack, Gordon) - CONDITIONAL - "Boys & Girls Clubs Keystone Law"; permits minors to give consent for behavioral health care

A-3500/S-1973 (Andrzejczak, Pinkin, Quijano/Van Drew, Beach) – ABSOLUTE - Requires local recreation departments and youth serving organizations to have defibrillators for youth athletic events

A-3954/S-2981 (Conaway, Singleton, Spencer, McKeon/Greenstein) – CONDITIONAL - Requires maximum contaminant level to be established for 1,2,3-trichloropropane in drinking water

A-3981/S-2572 (Mazzeo, Burzichelli, Andrzejczak/Sweeney, Whelan) - CONDITIONAL - "Casino Property Taxation Stabilization Act"

A-3982/S-2573 (Mazzeo, Burzichelli, Andrzejczak/Sweeney, Whelan) – ABSOLUTE - Requires holder of casino license to provide certain employees with certain health care and retirement benefits

A-3984/S-2575 (Mazzeo, Burzichelli, Giblin/Sweeney, Whelan) – CONDITIONAL - Reallocates casino investment alternative tax to Atlantic City to pay debt service on municipal bonds issued

A-3985/S-2576 (Mazzeo, Burzichelli, Andrzejczak, Giblin/Sweeney, Whelan) – CONDITIONAL - Removes provisions of law relating to Atlantic City Alliance

A-4018/S-2843 (Burzichelli, Caputo, Mazzeo/Sarlo, Whelan) – ABSOLUTE - Authorizes operation of lottery courier services

A-4218/S-2786 (Mosquera, Greenwald, Lagana, Benson, Lampitt, Vainieri Huttle, Daniels/Weinberg, Gill, Cruz-Perez) - CONDITIONAL - Revises certain laws concerning domestic violence and firearms

A-4265/S-2783 (McKeon, Pintor Marin, Jasey, Caputo, Giblin, Tucker, Spencer, Oliver, Gusciora, Danielson/Codey, Ruiz, Rice) – ABSOLUTE - Permits municipal, county, and regional police and fire forces to establish five-year residency requirement for police officers and firefighters; allows exceptions to requirement under certain circumstances

A-4337/S-3008 (Schaer, Daniels/Weinberg, Dancer, Sumter/Barnes) – ABSOLUTE - Expands eligibility of inmates for medical parole and requires inmate's enrollment in Medicaid under certain circumstances

A-4476/S-2876 (Conaway/Codey) - CONDITIONAL - Requires certain surgical practices and ambulatory care facilities licensed in this State to be owned by hospital or medical school located in the State

A-4607/S-3106 (Pintor Marin, Schaer, Oliver, Lagana, Johnson, Singleton/Ruiz, Cunningham) – ABSOLUTE - Makes FY 2016 supplemental appropriations of \$6,500,000 and adds language provision

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